

## MEMORANDUM

TO: Fiscal Review Committee

DATE: March 14, 2019

SUBJECT: Contract with NetSmart Technologies, Inc.

The Department of Mental Health and Substance Abuse Services (TDMHSAS) respectfully requests permission to enter into a contract with NetSmart Technologies, Incorporated on a non-competitive basis. The proposed term of this contract is five years (July 1, 2019 – June 30, 2024), with a maximum liability estimated at \$10,064,919.00.

NetSmart Technologies is a well-established company with over 18,000 customers, including 35 state systems. The Department desires to continue utilizing their software application, known as "AVATAR". AVATAR and its support were originally procured through an RFP process. Of the twenty companies who were sent the RFP, four submitted proposals, and NetSmart Technologies was the best choice for each of the nine evaluators.

Acquisition, support and maintenance for AVATAR can only be provided by NetSmart Technologies because of the licensing agreement. No other vendor has the rights to the AVATAR software.

Avatar currently provides the following capabilities to the State's four Regional Mental Health Institutes (RMHIs):

- The admission, discharge and transfer of patients
- The billing of patient services to Medicare, TennCare, private insurance companies and self-pay patients
- Receiving of payments from insurance and private pay patients
- Management of patient funds (trust accounts)
- Scanning of documents, identification and insurance cards
- Electronic clinical workstation
- Physician order entry (treatments, prescriptions, etc.)
- Electronic Medication Administration Records (eMAR)
- Automated Medication Dispensing Machines
- Enhanced pharmacy software (RxConnect)

The new contract will allow the Department to *optionally* expand the current capabilities listed above to include:

- Electronic prescription service to the patient's pharmacy on discharge
- Electronically transmit claims, receive explanation of benefits and verify eligibility
- Query nationwide CareQuality network
- Access to connect the four RMHI's with other providers, hospitals, physicians, HIE, Labs, Referral Networks, Immunization and Syndromic Surveillance systems. Includes direct messaging as well as referral connector and staff inbox capability.
- Access real time electronic Lab Orders and real time electronic Lab Results

The proposed contract includes a set of negotiated rates for expansion of the current capabilities as listed above, as well as, the support and maintenance agreement to cover a five year period, July 1, 2019 through June 30, 2024. The contract allows the Department to optionally select modules to procure and does not bind the State to purchase all products listed in the contract. The support and maintenance portion of the contract covers the current implementation for five years.

The Department has no operational reason to replace the existing system and has a significant investment in the software application. Over 1,000 administrative staff, including admissions, medical records, financial services, unit staff and central office staff rely on this application to perform their day-to-day duties. In the last three years, Department has expended over \$4,000,000.00 to update the system to replace a paper-based medical charting system for our four hospitals with an electronic medical records system. As a result, the current implementation of AVATAR is technologically up to date and the Department is satisfied with the system.

The Department has reviewed other systems and their costs and determined that if we were to go through the RFP process the current vendor Netsmart would have such an economic advantage that other vendors could not win an RFP to provide comparable software and services since they would be bidding to implement a new system and Netsmart would be bidding to continue maintenance of its current system. Further, it would take at least two years and significant man hours to implement a new system. Department does not believe replacing the current system is a cost-effective option for the State.

After taking all of this information into account, Department has determined NetSmart Technologies is the optimal choice for maintaining and supporting our existing hospital information system AVATAR.

Thank you for your consideration of this request.

# Supplemental Documentation Required for Fiscal Review Committee

|  |                |  |               |             |    |
|--|----------------|--|---------------|-------------|----|
| *Contact Name  | Quinn Simpson  | *Contact Phone                             | 615-253-7654  |             |    |
| *Presenter's name(s)   | Gene Wood      |  |               |             |    |
| Edison Contract Number: <i>(if applicable)</i>   |                | RFS Number: <i>(if applicable)</i>         |               |             |    |
| *Original or Proposed Contract Begin Date:   | July 1, 2019   | *Current or Proposed End Date:             | June 30, 2024 |             |    |
| Current Request Amendment Number: <i>(if applicable)</i>   |                |  |               |             |    |
| Proposed Amendment Effective Date: <i>(if applicable)</i>  |                |  |               |             |    |
| *Department Submitting:  |                | Mental Health and Substance Abuse Services |               |             |    |
| *Division:   |                | Hospital Services                          |               |             |    |
| *Date Submitted:   |                | March 15, 2019                             |               |             |    |
| *Submitted Within Sixty (60) days:   |                | Yes  |               |             |    |
| <i>If not, explain:</i>  |                |  |               |             |    |
| *Contract Vendor Name:   |                | NetSmart, Inc.                             |               |             |    |
| *Current or Proposed Maximum Liability:  |                | \$10,064,919.00                            |               |             |    |
| *Estimated Total Spend for Commodities:  |                | n/a  |               |             |    |
| *Current or <u>Proposed</u> Contract Allocation by Fiscal Year:<br><i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i> |                |  |               |             |    |
| FY:2020  | FY:2021        | FY:2022                                    | FY:2023       | FY:2024     | FY |
| \$2,014,851  | \$1,909,783    | \$1,989,737                                | \$2,076,975   | \$2,073,573 | \$ |
| *Current Total Expenditures by Fiscal Year of Contract:<br><i>(attach backup documentation from Edison)</i>                                |                |  |               |             |    |
| FY:2017  | FY:2018        | FY:2019                                    | FY:           | FY          | FY |
| \$1,883,922.77   | \$2,654,688.65 | \$2,091,832.32                             | \$            | \$          | \$ |
| IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:    |                |  | n/a           |             |    |
| IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:             |                |  | n/a           |             |    |
| IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:    |                |  | n/a           |             |    |
| *Contract Funding Source/Amount:   |                |  |               |             |    |
| State:   |                | \$10,064,919.00                            | Federal:      |             |    |
| <i>Interdepartmental:</i>  |                |  | <i>Other:</i> |             |    |
| If "other" please define:  |                |  | n/a           |             |    |

## Supplemental Documentation Required for Fiscal Review Committee

|  |   |
|--|---|
| If “ <i>interdepartmental</i> ” please define:   | n/a   |
| Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>  | Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>  |
|  |   |
| Method of Original Award: <i>(if applicable)</i>   | Procurement of the original system occurred via RFP; subsequent maintenance of the system has been via sole source methodology  |
| *What were the projected costs of the service for the entire term of the contract prior to contract award?<br>How was this cost determined?  | n/a   |
| *List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State. | <p>The Department’s AVATAR software can only be provided by Netsmart Technologies under the licensing agreement. No other vendors have rights to the AVATAR software. The Department also believes a sole source contract is in the best interest of the state for the following reasons:</p> <ul style="list-style-type: none"> <li>• The current implementation of AVATAR took over 2 years to complete and hundreds of hours in testing, training and custom development.</li> <li>• The software impacts the day-to-day operations of administrative staff, admissions, medical records, financial services and unit staff.</li> <li>• Pursuing an RFP to find a vendor that could provide comparable software and services could take well over a year, cost millions of dollars to implement new software, hundreds of hours in training state employees and additional yearly maintenance costs.</li> <li>• A review of all other states revealed that Netsmart is implemented in 35 states with 17 implementations in state behavioral health hospitals</li> <li>• Costs for comparable systems were reviewed; closest competitor was Cerner for \$17,028,907.</li> </ul> |

# **Netsmart Payments FY17 to FY19**

| Unit  | Voucher  | Invoice     | Remit Supp | Name                      | Payment Amt | Total Annual   | Reference  | Pymnt Date |
|-------|----------|-------------|------------|---------------------------|-------------|----------------|------------|------------|
| 33901 | 00064951 | 62402       | 0000123622 | Netsmart Technologies Inc | 63,231.00   |                | 0002200874 | 7/27/2016  |
| 33901 | 00065308 | 66149       | 0000123622 | Netsmart Technologies Inc | 27,756.80   |                | 0002230595 | 8/16/2016  |
| 33901 | 00066335 | 08312016-A  | 0000123622 | Netsmart Technologies Inc | 418,945.00  |                | 0002289766 | 9/30/2016  |
| 33901 | 00068374 | 85661       | 0000123622 | Netsmart Technologies Inc | 63,562.32   |                | 0002380664 | 12/5/2016  |
| 33901 | 00069156 | 80494       | 0000123622 | Netsmart Technologies Inc | 215,626.00  |                | 0002413510 | 12/27/2016 |
| 33901 | 00069164 | CONN-10142C | 0000123622 | Netsmart Technologies Inc | 1,500.00    |                | 0002413511 | 12/27/2016 |
| 33901 | 00069159 | 91870       | 0000123622 | Netsmart Technologies Inc | 24,158.80   |                | 0002415940 | 12/29/2016 |
| 33901 | 00069163 | 91871       | 0000123622 | Netsmart Technologies Inc | 18,878.40   |                | 0002415940 | 12/29/2016 |
| 33901 | 00069154 | 91873       | 0000123622 | Netsmart Technologies Inc | 63,562.32   |                | 0002417759 | 12/30/2016 |
| 33901 | 00069155 | 91874       | 0000123622 | Netsmart Technologies Inc | 31,781.16   |                | 0002417760 | 12/30/2016 |
| 33901 | 00070795 | 96981       | 0000123622 | Netsmart Technologies Inc | 358,757.07  |                | 0002494108 | 2/24/2017  |
| 33901 | 00071825 | 110180      | 0000123622 | Netsmart Technologies Inc | 65,873.00   |                | 0002549180 | 4/4/2017   |
| 33901 | 00071824 | 110179      | 0000123622 | Netsmart Technologies Inc | 65,873.00   |                | 0002549180 | 4/4/2017   |
| 33901 | 00072210 | 114003      | 0000123622 | Netsmart Technologies Inc | 65,873.00   |                | 0002572642 | 4/19/2017  |
| 33901 | 00073096 | 122733      | 0000123622 | Netsmart Technologies Inc | 8,495.28    |                | 0002617596 | 5/19/2017  |
| 33901 | 00073095 | 122734      | 0000123622 | Netsmart Technologies Inc | 15,102.72   |                | 0002617596 | 5/19/2017  |
| 33901 | 00073457 | 118163      | 0000123622 | Netsmart Technologies Inc | 359,056.32  | <b>FY17</b>    | 0002637536 | 6/6/2017   |
| 33901 | 00073458 | 117047      | 0000123622 | Netsmart Technologies Inc | 15,890.58   | \$1,883,922.77 | 0002639445 | 6/7/2017   |
| 33901 | 00074391 | 117046      | 0000123622 | Netsmart Technologies Inc | 47,671.74   |                | 0002689283 | 7/10/2017  |
| 33901 | 00074542 | 131725      | 0000123622 | Netsmart Technologies Inc | 65,873.00   |                | 0002693154 | 7/12/2017  |
| 33901 | 00076214 | 144353      | 0000123622 | Netsmart Technologies Inc | 15,890.58   |                | 0002777627 | 9/14/2017  |
| 33901 | 00076212 | 129820      | 0000123622 | Netsmart Technologies Inc | 366,700.32  |                | 0002777627 | 9/14/2017  |
| 33901 | 00076213 | 144352      | 0000123622 | Netsmart Technologies Inc | 95,343.48   |                | 0002777627 | 9/14/2017  |
| 33901 | 00079017 | 152363      | 0000123622 | Netsmart Technologies Inc | 47,671.74   |                | 0002905642 | 12/12/2017 |
| 33901 | 00079018 | 146166-R    | 0000123622 | Netsmart Technologies Inc | 427,710.74  |                | 0002905642 | 12/12/2017 |
| 33901 | 00079019 | 152361      | 0000123622 | Netsmart Technologies Inc | 47,671.74   |                | 0002905642 | 12/12/2017 |
| 33901 | 00079020 | 152362      | 0000123622 | Netsmart Technologies Inc | 47,671.74   |                | 0002905642 | 12/12/2017 |
| 33901 | 00079021 | 152360      | 0000123622 | Netsmart Technologies Inc | 71,507.61   |                | 0002905642 | 12/12/2017 |
| 33901 | 00079022 | 152359      | 0000123622 | Netsmart Technologies Inc | 63,562.32   |                | 0002905642 | 12/12/2017 |
| 33901 | 00079636 | 158963      | 0000123622 | Netsmart Technologies Inc | 15,890.62   |                | 0002923833 | 12/21/2017 |
| 33901 | 00079725 | 158970      | 0000123622 | Netsmart Technologies Inc | 10,314.84   |                | 0002933445 | 1/2/2018   |

| Unit  | Voucher  | Invoice  | Remit Supp | Name                      | Payment Amt | Total Annual   | Reference  | Pymnt Date |
|-------|----------|----------|------------|---------------------------|-------------|----------------|------------|------------|
| 33901 | 00081574 | 163710   | 0000123622 | Netsmart Technologies Inc | 57,899.00   |                | 0003007905 | 2/26/2018  |
| 33901 | 00083070 | 189874-R | 0000123622 | Netsmart Technologies Inc | 429,229.49  |                | 0003082150 | 4/17/2018  |
| 33901 | 00083069 | 189872-R | 0000123622 | Netsmart Technologies Inc | 428,723.24  |                | 0003082150 | 4/17/2018  |
| 33901 | 00084023 | 195478   | 0000123622 | Netsmart Technologies Inc | 798.00      |                | 0003112189 | 5/10/2018  |
| 33901 | 00084224 | 195620   | 0000123622 | Netsmart Technologies Inc | 25,000.00   |                | 0003126954 | 5/17/2018  |
| 33901 | 00085029 | 189777   | 0000123622 | Netsmart Technologies Inc | 49,500.00   |                | 0003159621 | 6/13/2018  |
| 33901 | 00085755 | 202392   | 0000123622 | Netsmart Technologies Inc | 15,890.58   |                | 0003184776 | 6/28/2018  |
| 33901 | 00085759 | 202395   | 0000123622 | Netsmart Technologies Inc | 103,288.77  |                | 0003184776 | 6/28/2018  |
| 33901 | 00085750 | 202399   | 0000123622 | Netsmart Technologies Inc | 47,671.74   |                | 0003184776 | 6/28/2018  |
| 33901 | 00085753 | 202398   | 0000123622 | Netsmart Technologies Inc | 23,835.87   |                | 0003184776 | 6/28/2018  |
| 33901 | 00085751 | 202913   | 0000123622 | Netsmart Technologies Inc | 23,835.87   |                | 0003184776 | 6/28/2018  |
| 33901 | 00085752 | 202389   | 0000123622 | Netsmart Technologies Inc | 54,027.97   |                | 0003184776 | 6/28/2018  |
| 33901 | 00085754 | 202387   | 0000123622 | Netsmart Technologies Inc | 23,835.87   |                | 0003184776 | 6/28/2018  |
| 33901 | 00085756 | 202914   | 0000123622 | Netsmart Technologies Inc | 15,890.58   |                | 0003184776 | 6/28/2018  |
| 33901 | 00085757 | 202390   | 0000123622 | Netsmart Technologies Inc | 15,890.62   | FY18           | 0003184776 | 6/28/2018  |
| 33901 | 00085758 | 202396   | 0000123622 | Netsmart Technologies Inc | 15,890.58   | \$2,654,688.65 | 0003184776 | 6/28/2018  |
| 33901 | 00085919 | 207650-R | 0000123622 | Netsmart Technologies Inc | 429,229.49  |                | 0003198601 | 7/6/2018   |
| 33901 | 00085946 | 207687   | 0000123622 | Netsmart Technologies Inc | 30,000.00   |                | 0003202395 | 7/10/2018  |
| 33901 | 00085944 | 198449   | 0000123622 | Netsmart Technologies Inc | 57,899.00   |                | 0003202395 | 7/10/2018  |
| 33901 | 00085945 | 207686   | 0000123622 | Netsmart Technologies Inc | 10,000.00   |                | 0003202395 | 7/10/2018  |
| 33901 | 00086897 | 207223   | 0000123622 | Netsmart Technologies Inc | 1,197.00    |                | 0003225190 | 7/26/2018  |
| 33901 | 00087114 | 213824   | 0000123622 | Netsmart Technologies Inc | 10,972.50   |                | 0003251102 | 8/15/2018  |
| 33901 | 00087829 | 208392   | 0000123622 | Netsmart Technologies Inc | 23,835.87   |                | 0003269301 | 8/28/2018  |
| 33901 | 00087832 | 208395   | 0000123622 | Netsmart Technologies Inc | 23,835.87   |                | 0003270350 | 8/29/2018  |
| 33901 | 00087831 | 208393   | 0000123622 | Netsmart Technologies Inc | 76,274.78   |                | 0003270350 | 8/29/2018  |
| 33901 | 00089102 | 222887   | 0000123622 | Netsmart Technologies Inc | 1,197.00    |                | 0003325300 | 10/5/2018  |
| 33901 | 00090032 | 227470-R | 0000123622 | Netsmart Technologies Inc | 434,733.44  |                | 0003353229 | 10/25/2018 |
| 33901 | 00090532 | 236309   | 0000123622 | Netsmart Technologies Inc | 76,274.79   |                | 0003390216 | 11/19/2018 |
| 33901 | 00090533 | 236308   | 0000123622 | Netsmart Technologies Inc | 77,876.98   |                | 0003390216 | 11/19/2018 |
| 33901 | 00090530 | 236307   | 0000123622 | Netsmart Technologies Inc | 60,338.12   |                | 0003390216 | 11/19/2018 |
| 33901 | 00090531 | 236310   | 0000123622 | Netsmart Technologies Inc | 23,839.97   |                | 0003390216 | 11/19/2018 |
| 33901 | 00091365 | 246611   | 0000123622 | Netsmart Technologies Inc | 76,274.78   |                | 0003421364 | 12/13/2018 |
| 33901 | 00091364 | 246612   | 0000123622 | Netsmart Technologies Inc | 23,835.87   |                | 0003421364 | 12/13/2018 |

| Unit  | Voucher  | Invoice  | Remit Supp | Name                      | Payment Amt | Total Annual   | Reference  | Pymnt Date |
|-------|----------|----------|------------|---------------------------|-------------|----------------|------------|------------|
| 33901 | 00091366 | 246613   | 0000123622 | Netsmart Technologies Inc | 157,316.74  |                | 0003425612 | 12/14/2018 |
| 33901 | 00092397 | 243512   | 0000123622 | Netsmart Technologies Inc | 58,569.68   |                | 0003465409 | 1/15/2019  |
| 33901 | 00092517 | 248601   | 0000123622 | Netsmart Technologies Inc | 1,197.00    |                | 0003473215 | 1/17/2019  |
| 33901 | 00092537 | 251698   | 0000123622 | Netsmart Technologies Inc | 2,400.00    | FY19           | 0003479846 | 1/24/2019  |
| 33901 | 00093317 | 252819-R | 0000123622 | Netsmart Technologies Inc | 434,733.44  | \$2,091,832.32 | 0003519121 | 2/20/2019  |



# Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

|                                  |             |                                    |             |
|----------------------------------|-------------|------------------------------------|-------------|
| <b>APPROVED</b>                  |             | <b>APPROVED</b>                    |             |
| <b>CHIEF PROCUREMENT OFFICER</b> | <b>DATE</b> | <b>COMPTROLLER OF THE TREASURY</b> | <b>DATE</b> |

|   |   |
|---|---|
| <b>Request Tracking #</b>   |   |
| <b>1. Contracting Agency</b>  | Mental Health and Substance Abuse Services  |
| <b>2. Type of Contract or Procurement Method</b>  | <input type="checkbox"/> No Cost<br><input type="checkbox"/> Revenue<br><input checked="" type="checkbox"/> Sole Source<br><input type="checkbox"/> Proprietary<br><input type="checkbox"/> Competitive Negotiation<br><input type="checkbox"/> Other _____ |
| <b>3. Requestor Contact Information</b>   | Quinn Simpson 615-253-7654<br>quinn.simpson@tn.gov  |
| <b>4. Brief Goods or Services Caption</b>   | Expansion, maintenance and support of department's existing AVATAR electronic clinical record system.   |
| <b>5. Description of the Goods or Services to be Acquired</b>   | Expansion, continued maintenance and support of AVATAR system used to electronically manage service recipient clinical and administrative records and revenue collection at State's four Regional Mental Health Institutes.                                 |
| <b>6. Proposed Contractor</b>   | NetSmart Technologies, Inc.   |
| <b>7. Name &amp; Address of the Contractor's principal owner(s)</b><br>– NOT required for a TN state education institution  | Mike Valentine, Chief Executive Officer - 4950 College Blvd - Overland Park, KS 66211   |
| <b>8. Proposed Contract Period</b> – with ALL options to extend exercised<br><i>The proposed contract start date shall follow the approval date of this request.</i>                                    | 60 months   |
| <b>9. Strategic Technology Solutions ("STS") Pre-Approval Endorsement Request</b> – information technology (N/A to THDA)  | <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached  |
| <b>10. eHealth Pre-Approval Endorsement Request</b><br>– health-related professional, pharmaceutical, laboratory, or imaging  | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached  |
| <b>11. Human Resources Pre-Approval Endorsement Request</b><br>– contracts with an individual, state employee training, or services related to the employment of current or prospective state employees | <input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached  |

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| <b>Request Tracking #</b>   |   |
| <b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b> | <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,  |
| <b>13. Maximum Contract Cost – with ALL options to extend exercised</b>   | \$10,064,919 (current estimate)   |
| <b>14. Was there an initial government estimate? If so, what amount?</b>  | <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, \$11,580,267.00  |
| <b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?  | Negotiated based on contractor estimate   |
| <b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable  | Costs for comparable systems reviewed; closest competitor was Cerner for \$17,028,907. Price also in line with previous years and comparable to support and maintenance for similar systems.  |
| <b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to request as applicable.                          | Discussion with vendor occurred via email, phone calls and face to face meetings  |
| <b>18. Explanation of Need for or requirement placed on the State to acquire the goods or services</b>  | TDMHSAS seeks to continue to fulfill the following goals in a proposed electronic solution: * Provide complete electronic medical records to replace paper charts * Create greater accuracy in RMHIs by including functionality such as voice transcription/ dictation and integrated electronic pharmacy systems utilizing Computerized Physician Order Entry or CPOE to reduce errors related to poor handwriting or transcription of medication orders * Improve clinical outcomes and best practices through evidence of successful treatments traced in robust reporting * Clinical standardization and oversight utilizing best practices and processes with the use of technology * Simultaneous access to medical records across all RMHIs * Provide the right information at the right time by utilizing menu-driven options, alerts, and medicine scanning and administration services * Offer a robust / real-time system that provides doctors, nurses and medical professionals state-of-the-art tools to serve those in need. Additional components that we hope to acquire include components for providers to send prescriptions directly to third party pharmacies and a billing clearing house for better revenue collection from third party payers. |

| Request Tracking #   |   |
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| <p><b>19. Proposed contract impact on current State operations</b></p> | <p>System allows staff to improve quality of care and safety for patient being served by creating efficiency in processes for both patient and staff involved, thereby improving mental health outcomes through tighter care coordination with community. Patient safety and quality improvements are achieved by reducing errors in both prescribing and administering medications, ensuring medical orders are accurately noted through use of Computerized Physician Order Entry (CPOE) where handwriting cannot be misread, and by making full patient record available to all care-giving staff, enabling them to collaborate on patient care. Staff efficiency is achieved with system by providing more time spent with patient and less time searching for a chart or lab result from a different department.</p> <p><u>Impact if Project is not Completed:</u> An electronic health record system is necessary because most medical providers contributing to the care of patients outside RMHs are implementing some type of EHR or EMR system. TDMHSAS will be disadvantaged, further and further, as technology advances and the RMHs do not continue to have the capability to communicate or share information for patients electronically. From a cost perspective, TDMHSAS will continue to accumulate an ever-growing chart population accompanied by chart construction costs and storage fees, without a way to remove these costs. By continuing this project, fees for chart construction and storage will be eliminated after the storage duration regulations expire for existing charts. Additionally, TDMHSAS will avoid expense of adding staff to RMHI pharmacies for weekend coverage via tools included in the system expansion.</p> |

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| <b>Request Tracking #</b>  |   |
| <b>20. Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.   | Department has no operational reason to replace the system and has significant investment in the software application. Over 1,000 administrative staff (including admissions, medical records, financial services, unit staff and central office staff) rely on the application to perform day-to-day duties. In the last 3 years, Department has expended over \$4,000,000 to update the system to replace a paper-based medical charting system for our 4 hospitals with an electronic medical records system. As a result, the current implementation of AVATAR is technologically up to date and Department is satisfied with the system. Department has reviewed other systems and costs and determined if we were to go through a RFP process, current vendor would have such an economic advantage that other vendors could not win a RFP to provide comparable software and services since they would be bidding to implement a new system and Netsmart would be bidding to continue maintenance of its current system. Further, it would take at least 2 years and significant man hours to implement a new system. We do not believe replacing current system is a cost-effective option for the State. |
| <b>For No Cost and Revenue Contracts Only</b>  |   |
| <b>21. What costs will the State incur as a result of this contract?</b><br>If any, please explain.  |   |
| <b>22. What is the total estimated revenue that the State would receive as a result of this contract?</b>  |   |
| <b>23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.</b>   | <input type="checkbox"/> NO <input type="checkbox"/> YES  |
| <b>24. Summary of State responsibilities under proposed contract</b>   |   |
| <b>For Sole Source and Proprietary Procurements Only</b>   |   |
| <b>25. Evidence of Contractor's experience &amp; length of experience providing the goods or services to be procured.</b>  | Netsmart has become the leading provider of behavioral/mental health care software to state and county agencies. Vendor has over 30 years' experience and currently contracts with approximately 35 state agencies across the country for these services.   |
| <b>26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.</b> | <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES,<br><br>Method: RFP and Sole Source<br>Name/Address: Netsmart Technologies, Inc.;<br>3500 Sunrise Hwy, Suite D-122; Great River,<br>NY 11739  |
| <b>27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</b>  | Contractor initially selected via competitive RFP. Costs for comparable systems reviewed; closest competitor was Cerner for \$17,028,907.   |
| <b>Signature Required for all Special Contract Requests</b>  |   |

|                    |  |
|--------------------|--|
| Request Tracking # |  |
|--------------------|--|

Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)

Signature:

A handwritten signature in black ink, appearing to read "Marie Williams", followed by a vertical line and a stylized mark.

Date: 03/15/2019

Marie Williams, Commissioner



July 12, 2018

Richard Zhu  
Executive IT Director  
Business Solutions Delivery  
Supporting Department of Mental Health and Substance Abuse Services  
Andrew Jackson Building, 6th Floor  
500 Deaderick Street, Nashville, TN 37243

Mr. Zhu:

Netsmart Technologies, Inc., "Netsmart," is the sole source for the Netsmart myAvatar software, licensed by Tennessee Department of Mental Health and Substance Abuse Services (DMHSAS). Netsmart is also the sole source provider for all the components of the solution, including: associated modules, professional services, Plexus Cloud Hosting, and Maintenance and Support Services.

The State of Tennessee request for the above products and services requires Netsmart to provide a combination of licensed software, professional services, cloud hosting, and professional support services for use with the existing installed proprietary and unique software provided exclusively by Netsmart.

Netsmart is the sole provider of the myAvatar solution and is the only entity with access to the source code. The Netsmart software currently licensed by Tennessee DMHSAS is provided to the State in object code only.

Netsmart Technologies, Inc. Tax ID #: [REDACTED]

Sincerely,

Keith Davis  
Director and GM, Public Sector East



# CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

|  |                                  |                          |                                 |
|--|----------------------------------|--------------------------|---------------------------------|
| <b>Begin Date</b><br>July 1, 2019  | <b>End Date</b><br>June 30, 2024 | <b>Agency Tracking #</b> | <b>Edison Record ID</b>         |
| <b>Contractor Legal Entity Name</b><br>Netsmart Technologies, Inc.   |                                  |                          | <b>Edison Vendor ID</b><br>6819 |
| <b>Goods or Services Caption</b> (one line only)<br>Maintenance, support, expansion of the AVATAR solution.  |                                  |                          |                                 |
| <b>Contractor</b><br><input checked="" type="checkbox"/> Contractor  |                                  | <b>CFDA #</b>            |                                 |
| <b>Funding —</b>   |                                  |                          |                                 |
| <b>FY</b>  | <b>State</b>                     | <b>Federal In</b>        | <b>terdepartmental Other</b>    |
| 2020   | \$2,014,851                      |                          |                                 |
| 2021   | \$1,909,783                      |                          |                                 |
| 2022   | \$1,989,737                      |                          |                                 |
| 2023   | \$2,076,975                      |                          |                                 |
| 2024   | \$2,073,573                      |                          |                                 |
| <b>TOTAL:</b>  | <b>\$10,064,919</b>              |                          |                                 |
| <b>Contractor Ownership Characteristics:</b>   |                                  |                          |                                 |
| <input type="checkbox"/> Minority Business Enterprise (MBE):<br><input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American<br><input type="checkbox"/> Woman Business Enterprise (WBE)<br><input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)<br><input type="checkbox"/> Disabled Owned Business (DSBE)<br><input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.<br><input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other: |                                  |                          |                                 |
| <b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)  |                                  |                          |                                 |
| <input type="checkbox"/> Competitive Selection<br><input type="checkbox"/> Other   |                                  |                          |                                 |
| <b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.  |                                  |                          |                                 |
| <b>Speed Chart</b> (optional)  | <b>Account Code</b> (optional)   |                          |                                 |



# CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

|  |                                  |                          |                                 |
|--|----------------------------------|--------------------------|---------------------------------|
| <b>Begin Date</b><br>July 1, 2019  | <b>End Date</b><br>June 30, 2024 | <b>Agency Tracking #</b> | <b>Edison Record ID</b>         |
| <b>Contractor Legal Entity Name</b><br>Netsmart Technologies, Inc.   |                                  |                          | <b>Edison Vendor ID</b><br>6819 |
| <b>Goods or Services Caption</b> (one line only)<br>Maintenance, support, expansion of the AVATAR solution.  |                                  |                          |                                 |
| <b>Contractor</b><br><input checked="" type="checkbox"/> Contractor  |                                  | <b>CFDA #</b>            |                                 |
| <b>Funding —</b>   |                                  |                          |                                 |
| <b>FY</b>  | <b>State</b>                     | <b>Federal In</b>        | <b>terdepartmental Other</b>    |
| 2020   | \$2,014,851                      |                          |                                 |
| 2021   | \$1,909,783                      |                          |                                 |
| 2022   | \$1,989,737                      |                          |                                 |
| 2023   | \$2,076,975                      |                          |                                 |
| 2024   | \$2,073,573                      |                          |                                 |
| <b>TOTAL:</b>  | <b>\$10,064,919</b>              |                          |                                 |
| <b>Contractor Ownership Characteristics:</b>   |                                  |                          |                                 |
| <input type="checkbox"/> Minority Business Enterprise (MBE):<br><input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American<br><input type="checkbox"/> Woman Business Enterprise (WBE)<br><input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)<br><input type="checkbox"/> Disabled Owned Business (DSBE)<br><input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.<br><input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other: |                                  |                          |                                 |
| <b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)  |                                  |                          |                                 |
| <input type="checkbox"/> Competitive Selection<br><input type="checkbox"/> Other   |                                  |                          |                                 |
| <b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.  |                                  |                          |                                 |
| <b>Speed Chart</b> (optional)  | <b>Account Code</b> (optional)   |                          |                                 |

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES  
AND  
NETSMART TECHNOLOGIES, INC.**

This Contract, by and between the State of Tennessee, Department of Mental Health and Substance Abuse Services ("State") and Netsmart Technologies, Inc. ("Contractor"), is for the provision of maintenance and support of the AVATAR solution, as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation.

Contractor Place of Incorporation or Organization: Delaware

Contractor Edison Registration ID # 6819

**A. SCOPE:**

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Contractor shall deliver the application and systems software for the AVATAR Software (also referred to as "MyAvatar") in accordance with the following requirements:
  - a. On-going Services for Current Applications. The Contractor shall continue to provide application and systems maintenance and support for all licensed applications. The State may, at its convenience and without cause, terminate the maintenance of a licensed program, by giving a written notice to the Contractor at least thirty (30) days prior to the actual termination.
  - b. Change Orders. Both parties agree that the State may request modifications and enhancements to the software using a six-step Change Order process used to define, specify, develop, test, and implement changes to the software. The purchase of additional AVATAR System Software modules may be authorized via the Change Orders process. These six (6) steps are:
    - (1) The State prepares specifications for a modification or enhancement;
    - (2) The Contractor prepares an estimate and the delivery date and cost of the Change Order, for the development of the modification or enhancement;
    - (3) The State accepts the estimate and authorizes the work via a separate Change Order document signed by both parties or rejects the estimate and disapproves the work;
    - (4) The Contractor delivers the modification or enhancement;
    - (5) The State accepts modification or enhancement; and
    - (6) The State shall pay Contractor's invoice for the work authorized, up to the amount of the estimate, upon the state's final acceptance of the contracted work.
- A.3. Software and Hardware Maintenance and Support – Contractor Responsibilities. Contractor shall:
  - a. Software: Maintain the current version of the licensed programs in substantial conformance with its Specifications as amended from time to time by the Contractor, and with applicable Federal regulatory requirements and laws. The Contractor will use commercially reasonable efforts to either correct any reproducible problems or defects in the then current or immediately prior release of licensed programs by the Contractor which prevent it from operating in substantial conformance with the specifications and

applicable Federal regulatory requirements or provide a commercially reasonable alternative that will substantially conform to the specifications and applicable Federal regulatory requirements and laws.

- b. Hardware: If Contractor determines that any contractor provided hardware ( [REDACTED] Equipment, including [REDACTED] cannot be made properly performing through repair services, the Contractor will replace portions of the medication dispensing hardware or restore the functionality of the system, as needed. Beginning in year 3 of this agreement, Contractor will restore the functionality of any Contractor provided medication dispensing hardware which is not properly performing to the best of its ability, but will have no obligation to replace hardware or any integral licensed programs for medication dispensing equipment.

- Interface Modifications. If Contractor modifies an interface between a Contractor provided medication dispensing equipment as part of its support services, State will timely test the modified interface. State's sole remedy related to interface functionality will be for Contractor to modify the interface to provide full functionality.
- Notwithstanding any other provision to the contrary set forth herein, Contractor shall provide support and maintenance for the Contractor provided medication dispensing equipment only with respect to the two (2) most recent Upgrades.
- Any equipment service not specifically identified herein as a component of the support services to be provided may be provided by Contractor under a authorized Change Order, agreement amendment or separate agreement between the State and Contractor.
- Replacement Parts. Contractor will adjust and replace non-consumable parts in Contractor provided medication dispensing equipment, which are not properly performing for any reason other than an External Cause (as defined below). Contractor will furnish replacement parts on an exchange basis.
- External Cause. Contractor is not obligated to perform support services for any part of the medication dispensing equipment which is not properly performing to the extent caused by: (i) abuse, misuse or vandalism; (ii) unauthorized repairs, including modification, alteration and adjustment; (iii) failure of equipment not supplied by Contractor; (iii) a computer virus or other disabling code introduced by a source other than Contractor; (iv) any support activity that is a State obligation as defined in this agreement; or (v) State prevents or refuses installation of an Update or Upgrade which State has purchased or is otherwise entitled to receive. If State requests that Contractor attempt to correct a problem with a medication dispensing equipment attributable to an External Cause, then Contractor will attempt to perform repair services on a time and materials basis at Contractor's then-current rates and prices.
- Preventative Maintenance. Contractor will perform onsite preventative maintenance, following State access policies, of medication dispensing equipment in accordance with Contractors then-current preventive maintenance schedule.
- Contractor will not be obligated to provide support services for State equipment that is not Contractor provided medication dispensing equipment, including but not limited to State's equipment, software and personal peripheral devices (e.g., mobile devices, printers) used in conjunction with Contractor provided medication dispensing equipment.
- Support services do not include the replacement or installation of consumables for Contractor provided medication dispensing equipment, including but not limited to batteries, paper and toner.

- c. Remote Support Services. Contractor will provide remote support services. State will provide Internet access and appropriate firewall modifications, per State policies, to enable connectivity, if applicable, to provide support. To the extent State's system, connectivity, or personnel prevent Contractor from performing remote support services where such services could be provided remotely, State will pay Contractor on a time and materials basis for any onsite services required. State will permit Contractor to install and maintain at State sites the licensed programs necessary to allow the deployment of Updates and Upgrades (defined below) remotely for integral licensed programs for medication dispensing equipment. Where remote services support is not practical and direct access to Contractor provided medication dispensing equipment is required, State will allow Contractor such access following State policies.
- Updates means a bug fix, patch, error correction, virus update, minor enhancement or modification to existing features to maintain the security or operation of the integral licensed programs for medication dispensing equipment. If Contractor generally releases an Update to the integral licensed programs for medication dispensing equipment, then Contractor will install the Update for licensed programs at State sites using remote support services or by other means chosen by Contractor and allowed by State policy. Contractor will deliver notice to State of the Update. State will promptly test the connections between the integral licensed programs for medication dispensing equipment and State's network and Contractor's provided information system.
  - Upgrade means a major enhancement, new feature or other improvement to the integral licensed programs for medication dispensing equipment, but does not include any hardware, software other than licensed programs for medication dispensing equipment, or any other software that Contractor generally licenses separately. If Contractor generally releases an Upgrade to the integral licensed programs for medication dispensing equipment, Contractor will install the Upgrade using remote services or by other means chosen by Contractor and allowed by State policy. Contractor will deliver notice to State of the Update. State will promptly test the connections between the integral licensed programs for medication dispensing equipment and State's network and Contractor's provided information system.
- d. Onsite Support Services. State may cancel scheduled onsite support services by delivering notice to Contractor no less than two (2) business days prior to the start date. If State fails to provide such notice or otherwise prevents Contractor from performing scheduled onsite support, then the priority response times provided in this agreement will not be honored. During any onsite support services, Contractor Personnel shall not handle State's medications. State must be present and capable of monitoring Contractor Personnel during any activity involving equipment and/or licensed programs in which medications are present. If State fails to do so, then State will reimburse Contractor for any expenses related to re-scheduling such activity.
- e. If analysis by the Contractor indicates that a reported problem is caused by a reproducible problem or defect, the Contractor will use commercially reasonable efforts to provide support services in accordance with the following prioritization of reported problems:
- Priority 1: Will be assigned when the licensed programs or a material program function component of the licensed programs is non-operational as a result of a defect, in Production environment only, such as the Production system cannot be accessed or utilized in any capacity, a direct patient safety issue is present, or a HIPAA compliance violation as a result of a server incident or Contractor application defect. Best efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within two (2) business days. Contractor will engage a P1 support request within 30 minutes of receipt. Contractor will maintain

continuous troubleshooting efforts until issue is resolved and will update plan toward resolution, which will be communicated at regular intervals.

Priority 2: Will be assigned to Production defects that result in functions that have a significant negative impact on daily operations but do not constitute as a "System Down". A workaround may be available and/or the capacity to maintain daily business functionality. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days.

Priority 3: Will be assigned for system defects that result in functions that have no major impact on daily operations; an issue that allows for the continuation of function, including issues in which a reasonable workaround is available. Commercially reasonable efforts will be made to correct Priority 3 problems, or to provide a plan for such correction, within ten (10) business day.

Priority 4: Will be assigned to cosmetic defects that do not affect system usability or non-defect related requests including, but not limited to, system set up/configuration, training, functionality questions, documentation, portal access, and upgrade requests. Commercially reasonable efforts will be made to address Priority 4 issues, or to provide a plan for such correction, within fifteen (15) business day.

f. On a timely basis, the Contractor shall also provide the State with:

- (1) Such updates as are distributed without charge to other similar clients which reflect modifications and incremental improvements made to the licensed programs by the Contractor;
- (2) An opportunity to obtain enhancements to the licensed programs for which charges are imposed on the same terms as such enhancements are generally made available to other clients; and
- (3) Mandatory upgrades to the licensed programs available to the State at no charge while this Contract is in effect. If the State requires assistance from the Contractor to install and configure any upgrade, the Contractor will provide support as a separate charge in addition to the annual support services fees. If the State fails to implement any mandatory upgrades, the Contractor may decline to renew this Contract on the next "anniversary date" unless the State brings the licensed programs up to the then current level. "Anniversary date" is defined as the first day of the State's fiscal year period for each of the fiscal years covered by this Contract. The Contractor may charge, and the State will pay, for software and services necessary to bring the licensed programs up to Contractor's then-current level before the Contractor will certify that the State is again eligible for maintenance hereunder.

g. The Contractor will make technical support personnel available from 9:00 a.m. to 6:00 p.m., Eastern Prevailing Time, Monday through Friday, exclusive of Contractor holidays.

h. If reasonable analysis by the Contractor indicates that a reported problem or defect is caused by a problem related to hardware used by the State, the hardware's system software, or applicable software other than licensed programs, or the State's misuse or modification of the licensed programs, the Contractor's responsibility will be limited to the correction of the portion, if any, of the problem caused by defect in the licensed programs.

i. Contractor support for all maintenance activities not covered under Section A.4 (State Obligations), including but not limited to, (i) all medication dispensing equipment break/fix

activities that require a trained service technician for triage, troubleshooting and service part replacement; (ii) server application, (iii) defects in medication dispensing equipment (iv) station database and operating system services, (v) support for server hardware acquired from Contractor, and (vi) interfaces.

- j. Contractor will schedule and deploy Contractor approved software patches for products that are not the responsibility of State.

#### A.4. Software and Hardware Maintenance and Support – State Obligations

- a. The State will make requests for support services by giving the Contractor written notice specifying a problem or defect in the licensed programs. In making a verbal request for Support Services, the State will provide the Contractor within twenty four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by the Contractor.
- b. The State will immediately inform the Contractor in writing of any modifications, additions or alterations to the licensed programs. If any modifications, additions or alterations of any kind or nature are made to the licensed programs by the State or anyone acting with the consent of or under the direction of the State, the Contractor may immediately terminate this contract without further obligation or liability to the State.
- c. The State will provide services for (i) State's side of medication dispensing equipment (station) and its server network connectivity, (ii) any State provided server hardware for the operation of medication dispensing equipment, and such server-based, non-application related system performance and downtime, e.g., operating system, database issues, host system etc. for such hardware.
- d. In the event State utilizes any non-contractor provided server environment in the future to support any medication dispensing equipment utilizing Contractor provided integral license programs, then the State must meet minimum server requirements as set forth by Contractor and will be responsible for system patches, security updates, data backup and server performance.
- e. The State will provide support for all non-Contractor provided peripheral products, e.g., mobile devices.
- f. The State will provide for medication dispensing equipment and its integral licensed programs.
  - (1) basic product features support for internal staff, including but not limited to general product use, facility-specific and general system settings and user login practices,
  - (2) basic hardware issue resolution, including drawer "jams" due to overfilling, cleaning of biometric identification devices, network cabling issues, and general equipment cleaning,
  - (3) State-specific network connectivity and configuration.

- A.5. Data Ownership. Data created and managed by the State remain the sole property of the State. The Contractor will not review, share, distribute, print, or reference any Client's data except as expressly defined by the terms of a Contract between the Contractor and the State. The Contractor may at times view or access individual records and State configuration details for the purpose of preventive maintenance or diagnosis and resolution of system problems or user support issues.

- A.6. Transfer of Data. Upon termination of this Contract all data created and managed by the State on

Contractor's equipment shall be removed and returned to the State in a usable format acceptable to the State, unless the parties enter into a similar, successive Contract. Contractor must perform a sanitization of confidential digital data and destruction of hard copy confidential data when the contract ends.

**A.7. System Availability and performance (if Contractor is hosting Licensed Software).**

- a. System shall be available continuously, as measured over the course of each calendar month, an average of 99% of the time. "Available" means the System shall be available for access and use by the State to conduct normal business associated with this system.
- b. For purposes of calculating the availability percentage, the following are "Exceptions" to the service level requirement:
  - (1) regularly scheduled downtime (which shall occur only upon advance written notice during non-core business hours); or
  - (2) loss of the State's Internet connectivity
- c. Consistent and responsive system performance is important to provide uninterrupted availability of means to dispense and administer medication to patients, even during peak workload times. System performance will be measured in terms of response time utilizing Netsmart's Guardian™ UX KPI ScoreCard. The average System response time shall be no more than **one** (1) to three (3) seconds. Ninety five percent (95%) of all response time should be less than two (2) seconds. The benchmark measurement will be set behind the Contractor firewall and if the parties determine there are substantial differences from that response time the parties will work in good faith to troubleshoot the State network latency issues as it relates to the Contractor solution.
- d. The State must notify Contractor as soon as possible if system performance or availability is outside of the specified requirements. Notification must happen through telephone and/or email to contacts provided by Contractor. Acknowledgment of the notification must be logged. The notification should be specific and detailed. The Contractor will provide frequent and regular updates until system performance or availability has returned to normal as per the specified requirements.

**A.8. Optional Products and Services.** The following products and services may be purchased by the State at any time during the term of this contract for the fees stated in C.3 so long as Contractor is then distributing and supporting such products and services. Prior to commencement of installation and product implementation activities the parties will agree upon a scope of work, project plan and specific payment milestones related to the product and services being purchased. Payment milestones will require the delivery and receipt of tangible deliverables.

| Ref | Area                            | Service Type    | Service Title       | Service Description   |
|-----|---------------------------------|-----------------|---------------------|---|
| a.  | Medication Management Expansion | Subscription Or | derConnect          | Prescriber Subscription for Electronic Prescribing including electronic prescribing of controlled substances (ePCS) |
| b.  | Medication Management Expansion | Subscription Or | derConnect          | Non-Prescribing User Subscription   |
| c.  | Medication Management Expansion | Subscription Or | derConnect Base Fee | Subscription fee for access to ePrescribing solution.   |

|    |   |                              |   |  |
|----|---|------------------------------|---|--|
| d. | Medication Management Expansion                 | Professional Services        | OrderConnect Implementation   | Implementation of Electronic Prescribing including controlled substances.  |
| e. | Medication Management Expansion                 | One-Time Fees                | OrderConnect ePCS tokens  | ePCS hard and soft tokens.   |
| f. | Practice Management Expansion                   | Subscription Re              | vConnect  | Subscription fee to electronically transmit claims, receive explanation of benefits and verify eligibility.  |
| g. | Interoperability, Consumer Use, Reporting Tools | Subscription CareQualit      | y   | Subscription fee to query nationwide CareQuality network.  |
| h. | Practice Management Expansion                   | Subscription                 | Enterprise Training Program   | Subscription providing access to training specialists and content.   |
| i. | Practice Management Expansion                   | Professional Services        | Health Check – Clinical   | Professional Services fee to evaluate and report on clinical processes.  |
| j. | Practice Management Expansion                   | Professional Services        | Health Check - Billing  | Professional Services fee to evaluate and report on billing processes.   |
| k. | Practice Management Expansion                   | Professional Services        | Avatar Function & Feature Fee   | Professional Services fee to review avatar function and features.  |
| l. | Interoperability, Consumer Use, Reporting Tools | Professional Services        | Implementation: All Interoperability and Reporting Tool Implementations | Project Management and Implementation services for Interoperability, Consumer Use, Reporting Tools.  |
| m. | Interoperability, Consumer Use, Reporting Tools | Subscription (non-perpetual) | CareConnect Inbox   | Subscription fee for access to connect the four RMHI's with other providers, hospitals, physicians, HIE, Labs, Referral Networks, Immunization and Syndromic Surveillance systems. Includes direct messaging as well as referral connector and staff inbox capability. |

|    |   |                                  |                                      |  |
|----|---|----------------------------------|--------------------------------------|--|
| n. | Interoperability,<br>Consumer Use,<br>Reporting Tools | Subscription (non-<br>perpetual) | CareConnect Lab Orders<br>(Outbound) | Subscription fee to access real<br>time electronic Lab Orders  |
| o. | Interoperability,<br>Consumer Use,<br>Reporting Tools | Subscription                     | CareConnect Lab<br>Results (Inbound) | Subscription fee to access real<br>time electronic Lab Results |

A.9. Business Associate Agreement. If required under relevant law or regulation regarding privacy, Contractor shall enter into a Business Associate Agreement (BAA) with the State (**Attachment Two**) or provide a copy of Business Associate Agreement previously entered into by the parties.

A.10. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

A.11. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

**B. TERM OF CONTRACT:**

This Contract shall be effective for the period beginning on July 1, 2019 ("Effective Date") and ending on **June 30, 2024**, ("Term"). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
  - The Contractor shall be compensated based upon the following payment methodology:

**Table C.3 – A**

| Quarterly Payment Schedule |  |             |             |             |             |             |
|----------------------------|--|-------------|-------------|-------------|-------------|-------------|
| Ref #                      | Description  | Year 1      | Year 2      | Year 3      | Year 4      | Year 5      |
|                            |  | 1-Jul-19    | 1-Jul-20    | 1-Jul-21    | 1-Jul-22    | 1-Jul-23    |
|                            |  | to          | to          | to          | to          | to          |
|                            |  | 30-Jun-20   | 30-Jun-21   | 30-Jun-22   | 30-Jun-23   | 30-Jun-24   |
| QM1a                       | Avatar PM; Avatar MPI; Avatar Client   | \$48,221.00 | \$50,150.00 | \$52,658.00 | \$55,291.00 | \$58,056.00 |
| QM1b                       | Banking (CFMS); Avatar CWS; DSS;   |             | \$50,150.00 | \$52,658.00 | \$55,291.00 | \$58,056.00 |
| QM1c                       | and RADplus  |             | \$50,150.00 | \$52,658.00 | \$55,291.00 | \$58,056.00 |
| QM1d                       | Modeling Tool as noted in Section A.2.a  |             | \$50,150.00 | \$52,658.00 | \$55,291.00 | \$58,056.00 |
| QM2a                       | DMS SQL as noted in Section A.2.a  | \$5,714.00  | \$5,943.00  | \$6,240.00  | \$6,552.00  | \$6,880.00  |
| QM2b                       |  |             | \$5,943.00  | \$6,240.00  | \$6,552.00  | \$6,880.00  |
| QM2c                       |  |             | \$5,943.00  | \$6,240.00  | \$6,552.00  | \$6,880.00  |
| QM2d                       |  |             | \$5,943.00  | \$6,240.00  | \$6,552.00  | \$6,880.00  |
| QM3a                       | Cache (AVATAR - Production 199 concurrent users; Test 16 concurrent users; Platform-Specific, Single Server) as noted in Section A.2.a | N/A         | N/A         | N/A         | N/A         | N/A         |
| QM3b                       |  |             | N/A         | N/A         | N/A         | N/A         |
| QM3c                       |  |             | N/A         | N/A         | N/A         | N/A         |
| QM3d                       |  |             | N/A         | N/A         | N/A         | N/A         |
| QM4a                       | Avatar Incident  | \$1,009.00  | \$1,050.00  | \$1,103.00  | \$1,158.00  | \$1,216.00  |

|       |  |              |              |              |              |              |
|-------|--|--------------|--------------|--------------|--------------|--------------|
| QM4b  | Tracking as noted in Section A.2.a   | \$1,009.00   | \$1,050.00   | \$1,103.00   | \$1,158.00   | \$1,216.00   |
| QM4c  |  | \$1,009.00   | \$1,050.00   | \$1,103.00   | \$1,158.00   | \$1,216.00   |
| QM4d  |  | \$1,009.00   | \$1,050.00   | \$1,103.00   | \$1,158.00   | \$1,216.00   |
| QM5a  | HL7 interface from AVATAR to the Pharmacy / CPOE / MAR System as noted in Section A.2.a                  | \$5,606.00   | \$5,830.00   | \$6,122.00   | \$6,428.00   | \$6,749.00   |
| QM5b  |  | \$5,606.00   | \$5,830.00   | \$6,122.00   | \$6,428.00   | \$6,749.00   |
| QM5c  |  | \$5,606.00   | \$5,830.00   | \$6,122.00   | \$6,428.00   | \$6,749.00   |
| QM5d  |  | \$5,606.00   | \$5,830.00   | \$6,122.00   | \$6,428.00   | \$6,749.00   |
| QM6a  | ICD-10 / DSM-5 Diagnosis Content Subscription as noted in Section A.2.a                                  | \$1,711.00   | \$1,780.00   | \$1,869.00   | \$1,962.00   | \$2,060.00   |
| QM6b  |  | \$1,711.00   | \$1,780.00   | \$1,869.00   | \$1,962.00   | \$2,060.00   |
| QM6c  |  | \$1,711.00   | \$1,780.00   | \$1,869.00   | \$1,962.00   | \$2,060.00   |
| QM6d  |  | \$1,711.00   | \$1,780.00   | \$1,869.00   | \$1,962.00   | \$2,060.00   |
| QM7a  | Escrow Account Terminated Service. Terminates July 1, 2019   | Terminated   | N/A          | N/A          | N/A          | N/A          |
| QM7b  |  | Terminated   | N/A          | N/A          | N/A          | N/A          |
| QM7c  |  | Terminated   | N/A          | N/A          | N/A          | N/A          |
| QM7d  |  | Terminated   | N/A          | N/A          | N/A          | N/A          |
| QM8a  | Plexus Cloud Hosting - Avatar as noted in section A.2.a  | \$144,000.00 | \$144,000.00 | \$151,200.00 | \$158,760.00 | \$166,698.00 |
| QM8b  |  | \$144,000.00 | \$144,000.00 | \$151,200.00 | \$158,760.00 | \$166,698.00 |
| QM8c  |  | \$144,000.00 | \$144,000.00 | \$151,200.00 | \$158,760.00 | \$166,698.00 |
| QM8d  |  | \$144,000.00 | \$144,000.00 | \$151,200.00 | \$158,760.00 | \$166,698.00 |
| QM9a  | Plexus Cloud Hosting - Avatar Data Warehouse as noted in section A.2.a                                   | \$2,400.00   | \$2,400.00   | \$2,520.00   | \$2,646.00   | \$2,778.30   |
| QM9b  |  | \$2,400.00   | \$2,400.00   | \$2,520.00   | \$2,646.00   | \$2,778.30   |
| QM9c  |  | \$2,400.00   | \$2,400.00   | \$2,520.00   | \$2,646.00   | \$2,778.30   |
| QM9d  |  | \$2,400.00   | \$2,400.00   | \$2,520.00   | \$2,646.00   | \$2,778.30   |
| QM10a | Plexus Cloud Hosting - Perceptive as noted in section A.2.a  | \$17,136.00  | \$17,136.00  | \$17,992.80  | \$18,892.44  | \$19,837.06  |
| QM10b |  | \$17,136.00  | \$17,136.00  | \$17,992.80  | \$18,892.44  | \$19,837.06  |
| QM10c |  | \$17,136.00  | \$17,136.00  | \$17,992.80  | \$18,892.44  | \$19,837.06  |
| QM10d |  | \$17,136.00  | \$17,136.00  | \$17,992.80  | \$18,892.44  | \$19,837.06  |
| QM11a | Plexus Cloud Hosting - RxConnect (10 Users) as noted in section A.2.a                                    | \$2,700.00   | \$2,700.00   | \$2,835.00   | \$2,976.75   | \$3,125.59   |
| QM11b |  | \$2,700.00   | \$2,700.00   | \$2,835.00   | \$2,976.75   | \$3,125.59   |
| QM11c |  | \$2,700.00   | \$2,700.00   | \$2,835.00   | \$2,976.75   | \$3,125.59   |
| QM11d |  | \$2,700.00   | \$2,700.00   | \$2,835.00   | \$2,976.75   | \$3,125.59   |
| QM12a | Plexus Cloud Hosting - [REDACTED] ES ADM as noted in section A.2.a                                       | \$13,776     | \$13,776     | \$14,465     | \$15,188     | \$15,947     |
| QM12b |  | \$13,776     | \$13,776     | \$14,465     | \$15,188     | \$15,947     |
| QM12c |  | \$13,776     | \$13,776     | \$14,465     | \$15,188     | \$15,947     |
| QM12d |  | \$13,776     | \$13,776     | \$14,465     | \$15,188     | \$15,947     |
| QM13a | Avatar RADplus Named User Maintenance: 1218 - 1400 Named User Expansion as noted in section A.2.a        | \$8,848.89   | \$9,291.33   | \$9,756.00   | \$10,244.00  | \$10,756.00  |
| QM13b |  | \$8,848.89   | \$9,291.33   | \$9,756.00   | \$10,244.00  | \$10,756.00  |
| QM13c |  | \$8,848.89   | \$9,291.33   | \$9,756.00   | \$10,244.00  | \$10,756.00  |
| QM13d |  | \$8,848.89   | \$9,291.33   | \$9,756.00   | \$10,244.00  | \$10,756.00  |
| QM14a | Avatar RADplus Named User Maintenance - 24x7 Premium: 00 - 1400 Named User Expansion as noted in section | \$30,630.76  | \$32,162.30  | \$33,770.00  | \$35,459.00  | \$37,232.00  |
| QM14b |  | \$30,630.76  | \$32,162.30  | \$33,770.00  | \$35,459.00  | \$37,232.00  |
| QM14c |  | \$30,630.76  | \$32,162.30  | \$33,770.00  | \$35,459.00  | \$37,232.00  |
| QM14d |  | \$30,630.76  | \$32,162.30  | \$33,770.00  | \$35,459.00  | \$37,232.00  |

|       |  |             |             |             |             |             |
|-------|--|-------------|-------------|-------------|-------------|-------------|
|       | A.2.a  |             |             |             |             |             |
| QM15a | POS and Batch Scanning Powered by Perceptive Maintenance as noted in section A.2.a | \$4,254.27  | \$4,466.99  | \$4,690.00  | \$4,925.00  | \$5,171.00  |
| QM15b |  | \$4,254.27  | \$4,466.99  | \$4,690.00  | \$4,925.00  | \$5,171.00  |
| QM15c |  | \$4,254.27  | \$4,466.99  | \$4,690.00  | \$4,925.00  | \$5,171.00  |
| QM15d |  | \$4,254.27  | \$4,466.99  | \$4,690.00  | \$4,925.00  | \$5,171.00  |
| QM16a | Avatar Electronic Signature Maintenance as noted in section A.2.a                  | \$2,344.19  | \$2,461.40  | \$2,584.00  | \$2,713.00  | \$2,849.00  |
| QM16b |  | \$2,344.19  | \$2,461.40  | \$2,584.00  | \$2,713.00  | \$2,849.00  |
| QM16c |  | \$2,344.19  | \$2,461.40  | \$2,584.00  | \$2,713.00  | \$2,849.00  |
| QM16d |  | \$2,344.19  | \$2,461.40  | \$2,584.00  | \$2,713.00  | \$2,849.00  |
| QM17a | Avatar ASI Maintenance as noted in section A.2.a                                   | \$456.10    | \$478.91    | \$503.00    | \$528.00    | \$554.00    |
| QM17b |  | \$456.10    | \$478.91    | \$503.00    | \$528.00    | \$554.00    |
| QM17c |  | \$456.10    | \$478.91    | \$503.00    | \$528.00    | \$554.00    |
| QM17d |  | \$456.10    | \$478.91    | \$503.00    | \$528.00    | \$554.00    |
| QM18a | Rx-RxConnect Browser Maintenance Fee 0 - 100 Beds as noted in section A.2.a        | \$2,929.95  | \$3,076.45  | \$3,230.00  | \$3,392.00  | \$3,562.00  |
| QM18b |  | \$2,929.95  | \$3,076.45  | \$3,230.00  | \$3,392.00  | \$3,562.00  |
| QM18c |  | \$2,929.95  | \$3,076.45  | \$3,230.00  | \$3,392.00  | \$3,562.00  |
| QM18d |  | \$2,929.95  | \$3,076.45  | \$3,230.00  | \$3,392.00  | \$3,562.00  |
| QM19a | Rx-RxConnect Browser Maintenance Fee 101 - 200 Beds as noted in section A.2.a      | \$10,939.56 | \$11,486.53 | \$12,061.00 | \$12,664.00 | \$13,297.00 |
| QM19b |  | \$10,939.56 | \$11,486.53 | \$12,061.00 | \$12,664.00 | \$13,297.00 |
| QM19c |  | \$10,939.56 | \$11,486.53 | \$12,061.00 | \$12,664.00 | \$13,297.00 |
| QM19d |  | \$10,939.56 | \$11,486.53 | \$12,061.00 | \$12,664.00 | \$13,297.00 |
| QM20a | Rx-ADM Maintenance Fee 0-200 beds: All four locations as noted in section A.2.a    | \$1,054.46  | \$1,092.08  | \$1,146.68  | \$1,204.02  | \$1,264.22  |
| QM20b |  | \$1,054.46  | \$1,092.08  | \$1,146.68  | \$1,204.02  | \$1,264.22  |
| QM20c |  | \$1,054.46  | \$1,092.08  | \$1,146.68  | \$1,204.02  | \$1,264.22  |
| QM20d |  | \$1,054.46  | \$1,092.08  | \$1,146.68  | \$1,204.02  | \$1,264.22  |
| QM21a | RxScan NDC Translator as noted in section A.2.a                                    | \$4,535.92  | \$4,553.24  | \$4,781.00  | \$5,020.00  | \$5,271.00  |
| QM21b |  | \$4,535.92  | \$4,553.24  | \$4,781.00  | \$5,020.00  | \$5,271.00  |
| QM21c |  | \$4,535.92  | \$4,553.24  | \$4,781.00  | \$5,020.00  | \$5,271.00  |
| QM21d |  | \$4,535.92  | \$4,553.24  | \$4,781.00  | \$5,020.00  | \$5,271.00  |
| QM22a | Ultimedex Suite Subscription as noted in section A.2.a                             | \$6,251.18  | \$6,563.73  | \$6,892.00  | \$7,237.00  | \$7,599.00  |
| QM22b |  | \$6,251.18  | \$6,563.73  | \$6,892.00  | \$7,237.00  | \$7,599.00  |
| QM22c |  | \$6,251.18  | \$6,563.73  | \$6,892.00  | \$7,237.00  | \$7,599.00  |
| QM22d |  | \$6,251.18  | \$6,563.73  | \$6,892.00  | \$7,237.00  | \$7,599.00  |
| QM23a | Crystal Reports Developer's Version Maintenance as noted in section A.2.a          | \$28.94     | \$30.39     | \$32.00     | \$34.00     | \$36.00     |
| QM23b |  | \$28.94     | \$30.39     | \$32.00     | \$34.00     | \$36.00     |
| QM23c |  | \$28.94     | \$30.39     | \$32.00     | \$34.00     | \$36.00     |
| QM23d |  | \$28.94     | \$30.39     | \$32.00     | \$34.00     | \$36.00     |
| QM24a | Avatar Order Entry Maintenance as noted in section A.2.a                           | \$2,127.14  | \$2,233.49  | \$2,345.00  | \$2,462.00  | \$2,585.00  |
| QM24b |  | \$2,127.14  | \$2,233.49  | \$2,345.00  | \$2,462.00  | \$2,585.00  |
| QM24c |  | \$2,127.14  | \$2,233.49  | \$2,345.00  | \$2,462.00  | \$2,585.00  |
| QM24d |  | \$2,127.14  | \$2,233.49  | \$2,345.00  | \$2,462.00  | \$2,585.00  |
| QM25a | Avatar eMAR Maintenance as noted in section A.2.a                                  | \$2,127.14  | \$2,233.49  | \$2,345.00  | \$2,462.00  | \$2,585.00  |
| QM25b |  | \$2,127.14  | \$2,233.49  | \$2,345.00  | \$2,462.00  | \$2,585.00  |
| QM25c |  | \$2,127.14  | \$2,233.49  | \$2,345.00  | \$2,462.00  | \$2,585.00  |

|                     |  |                              |                            |                            |                            |                            |
|---------------------|--|------------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| QM25d               |  | \$2,127.14                   | \$2,233.49                 | \$2,345.00                 | \$2,462.00                 | \$2,585.00                 |
| QM31a               | Wiley Content Libraries Subscription as noted in section A.2.a                               | \$1,980.00                   | \$1,980.00                 | \$2,079.00                 | \$2,182.95                 | \$2,292.10                 |
| QM31b               |  | \$1,980.00                   | \$1,980.00                 | \$2,079.00                 | \$2,182.95                 | \$2,292.10                 |
| QM31c               |  | \$1,980.00                   | \$1,980.00                 | \$2,079.00                 | \$2,182.95                 | \$2,292.10                 |
| QM31d               |  | \$1,980.00                   | \$1,980.00                 | \$2,079.00                 | \$2,182.95                 | \$2,292.10                 |
| QM32a               | myLearningpointe Subscription & Training as a service Subscription as noted in section A.2.a | \$7,500.00                   | \$7,500.00                 | \$7,875.00                 | \$8,268.75                 | \$8,682.19                 |
| QM32b               |  | \$7,500.00                   | \$7,500.00                 | \$7,875.00                 | \$8,268.75                 | \$8,682.19                 |
| QM32c               |  | \$7,500.00                   | \$7,500.00                 | \$7,875.00                 | \$8,268.75                 | \$8,682.19                 |
| QM32d               |  | \$7,500.00                   | \$7,500.00                 | \$7,875.00                 | \$8,268.75                 | \$8,682.19                 |
| QM33a               | ██████ ES Automated Dispensing Machines as noted in section A.2.a                            | \$23,852.40                  | \$25,045.02                | \$26,297.00                | \$27,612.00                | \$28,993.00                |
| QM33b               |  | \$23,852.40                  | \$25,045.02                | \$26,297.00                | \$27,612.00                | \$28,993.00                |
| QM33c               |  | \$23,852.40                  | \$25,045.02                | \$26,297.00                | \$27,612.00                | \$28,993.00                |
| QM33d               |  | \$23,852.40                  | \$25,045.02                | \$26,297.00                | \$27,612.00                | \$28,993.00                |
| CO1                 | Professional Services - Authorized using Change Orders per Section A.2.b                     | \$225 per hour x 1,247 hours | \$225 per hour x 667 hours | \$225 per hour x 667 hours | \$225 per hour x 667 hours | \$225 per hour x 667 hours |
|                     |  | \$280,575.00                 | \$150,075.00               | \$150,075.00               | \$150,075.00               | \$150,075.00               |
| Total Annual Amount |  | \$1,689,110.60               | \$1,587,756.40             | \$1,659,640.14             | \$1,735,122.79             | \$1,814,378.58             |

Table C.3 - B

| Ref #        | Unit | Service Description   | Amount    |
|--------------|------|---|-----------|
| OT1 One-Time |      | OrderConnect Implementation- as noted in A. 8 - i   | \$55,000  |
| OT2 One-Time |      | OrderConnect ePCS tokens- as noted in A. 8 - j  | \$3,750   |
| OT3 One-Time |      | RevConnect Implementation- as noted in A. 8 - k   | \$3,000   |
| OT4 One-Time |      | CareQuality Implementation- as noted in A. 8 - l  | \$39,375  |
| OT5 One-Time |      | Health Check – Clinical- as noted in A. 8 - n   | \$95,000  |
| OT6 One-Time |      | Health Check - Billing- as noted in A. 8 - o  | \$95,000  |
| OT7 One-Time |      | Implementation: All Interoperability and Reporting Tool Implementations as noted in section A.8.r | \$210,000 |

Table C.3 – C

For the purposes of clarity, any fees shown as \$0 are representative that the associated optional item will not be purchased in that year. If it is desired to be purchased, then the associated dollar amounts would be changed to reflect the actual annual purchase fee.

| Quarterly Payment Schedule |  |                                       |                                       |                                       |                                       |                                       |
|----------------------------|--|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|
| Ref #                      | Service Description  | Year 1<br>7/1/2019<br>to<br>6/30/2020 | Year 2<br>7/1/2020<br>to<br>6/30/2021 | Year 3<br>7/1/2021<br>to<br>6/30/2022 | Year 4<br>7/1/2022<br>to<br>6/30/2023 | Year 5<br>7/1/2023<br>to<br>6/30/2024 |
| QM34a                      | OrderConnect –<br>ePrescribing, 50<br>prescribers  | \$0                                   | \$16,380                              | \$17,199                              | \$18,059                              | \$18,962                              |
| QM34b                      |  | \$0                                   | \$16,380                              | \$17,199                              | \$18,059                              | \$18,962                              |
| QM34c                      |  | \$0                                   | \$16,380                              | \$17,199                              | \$18,059                              | \$18,962                              |
| QM34d                      |  | \$0                                   | \$16,380                              | \$17,199                              | \$18,059                              | \$18,962                              |
| QM35a                      | OrderConnect – non<br>Prescriber, 200 non-<br>prescribers  | \$0                                   | \$8,190                               | \$8,600                               | \$9,029                               | \$9,481                               |
| QM35b                      |  | \$0                                   | \$8,190                               | \$8,600                               | \$9,029                               | \$9,481                               |
| QM35c                      |  | \$0                                   | \$8,190                               | \$8,600                               | \$9,029                               | \$9,481                               |
| QM35d                      |  | \$0                                   | \$8,190                               | \$8,600                               | \$9,029                               | \$9,481                               |
| QM36a                      | OrderConnect Base Fee  | \$0                                   | \$394                                 | \$413                                 | \$434                                 | \$456                                 |
| QM36b                      |  | \$0                                   | \$394                                 | \$413                                 | \$434                                 | \$456                                 |
| QM36c                      |  | \$0                                   | \$394                                 | \$413                                 | \$434                                 | \$456                                 |
| QM36d                      |  | \$0                                   | \$394                                 | \$413                                 | \$434                                 | \$456                                 |
| QM37a                      | RevConnect Subscription -<br>per transaction volume<br>provided and subject to<br>increases if higher. | \$1,185                               | \$1,244                               | \$1,306                               | \$1,372                               | \$1,440                               |
| QM37b                      |  | \$1,185                               | \$1,244                               | \$1,306                               | \$1,372                               | \$1,440                               |
| QM37c                      |  | \$1,185                               | \$1,244                               | \$1,306                               | \$1,372                               | \$1,440                               |
| QM37d                      |  | \$1,185                               | \$1,244                               | \$1,306                               | \$1,372                               | \$1,440                               |
| QM38a                      | CareQuality Subscription   | \$0                                   | \$1,418                               | \$1,488                               | \$1,563                               | \$1,641                               |
| QM38b                      |  | \$0                                   | \$1,418                               | \$1,488                               | \$1,563                               | \$1,641                               |
| QM38c                      |  | \$0                                   | \$1,418                               | \$1,488                               | \$1,563                               | \$1,641                               |
| QM38d                      |  | \$0                                   | \$1,418                               | \$1,488                               | \$1,563                               | \$1,641                               |
| QM39a                      | Enterprise Training<br>Program   | \$7,500                               | \$7,875                               | \$8,269                               | \$8,682                               | \$9,116                               |
| QM39b                      |  | \$7,500                               | \$7,875                               | \$8,269                               | \$8,682                               | \$9,116                               |
| QM39c                      |  | \$7,500                               | \$7,875                               | \$8,269                               | \$8,682                               | \$9,116                               |
| QM39d                      |  | \$7,500                               | \$7,875                               | \$8,269                               | \$8,682                               | \$9,116                               |
| QM40a                      | Avatar Function & Feature<br>Fee   | \$2,100                               | \$2,205                               | \$2,315                               | \$2,431                               | \$2,553                               |
| QM40b                      |  | \$2,100                               | \$2,205                               | \$2,315                               | \$2,431                               | \$2,553                               |
| QM40c                      |  | \$2,100                               | \$2,205                               | \$2,315                               | \$2,431                               | \$2,553                               |
| QM40d                      |  | \$2,100                               | \$2,205                               | \$2,315                               | \$2,431                               | \$2,553                               |
| QM41a                      | CareConnect Inbox as<br>noted in section A.8.r   | \$12,600                              | \$13,230                              | \$13,892                              | \$14,586                              | \$15,315                              |
| QM41b                      |  | \$12,600                              | \$13,230                              | \$13,892                              | \$14,586                              | \$15,315                              |
| QM41c                      |  | \$12,600                              | \$13,230                              | \$13,892                              | \$14,586                              | \$15,315                              |
| QM41d                      |  | \$12,600                              | \$13,230                              | \$13,892                              | \$14,586                              | \$15,315                              |
| QM42a                      | CareConnect Lab Orders<br>(Outbound) Out of network<br>or state labs may require                       | \$2,400                               | \$2,520                               | \$2,646                               | \$2,778                               | \$2,917                               |
| QM42b                      |  | \$2,400                               | \$2,520                               | \$2,646                               | \$2,778                               | \$2,917                               |

|       |  |         |         |         |         |         |
|-------|--|---------|---------|---------|---------|---------|
| QM42c | aggregator fees as noted in section A.8.s  | \$2,400 | \$2,520 | \$2,646 | \$2,778 | \$2,917 |
| QM42d |  | \$2,400 | \$2,520 | \$2,646 | \$2,778 | \$2,917 |
| QM43a | CareConnect Lab Results (Inbound) Out of network or state labs may require aggregator fees as noted in section A.8.t | \$2,400 | \$2,520 | \$2,646 | \$2,778 | \$2,917 |
| QM43b |  | \$2,400 | \$2,520 | \$2,646 | \$2,778 | \$2,917 |
| QM43c |  | \$2,400 | \$2,520 | \$2,646 | \$2,778 | \$2,917 |
| QM43d |  | \$2,400 | \$2,520 | \$2,646 | \$2,778 | \$2,917 |

- c. QM = Quarterly Maintenance; all quarterly maintenance fees shall be paid in arrears.
- d. In the event the State fails to pay for service within sixty (60) days from date of receipt of each accurate invoice properly submitted, except for amounts disputed by the State in good faith, the Contractor may refuse to provide service until the State pays the amount due when service was discontinued; quarterly maintenance fees that would have been paid had service not been discontinued to bring the system current; and any current amount due pursuant to this Contract.
- e. For the optional products and services contained in this contract, payments will be made in accordance with an agreed upon payment schedule that will be detailed in the document of authorization to proceed.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods conforming to the contract specification delivered ~~and accepted by~~ the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Tennessee Department of Mental Health and Substance Abuse Services  
ATTN: Fiscal Services  
Andrew Jackson Building, 6<sup>th</sup> Floor  
500 Deaderick Street  
Nashville, TN 37243

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
  - (1) Invoice number (assigned by the Contractor);
  - (2) Invoice date;
  - (3) Contract number (assigned by the State);
  - (4) Customer account name: Department of Mental Health and Substance Abuse Services, Division of XYZ;
  - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
  - (6) Contractor name;
  - (7) Contractor Tennessee Edison registration ID number;
  - (8) Contractor contact for invoice questions (name, phone, or email);
  - (9) Contractor remittance address;
  - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
  - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
  - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;

- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

**D. MANDATORY TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier

service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Cynthia Tyler, Assistant Commissioner  
Division of Administrative and Regulatory Services  
Department of Mental Health and Substance Abuse Services  
Andrew Jackson Building, 6<sup>th</sup> Floor  
500 Deaderick Street  
Nashville, TN 37243  
Cynthia.tyler@tn.gov  
Telephone: 615-532-0410

The Contractor:

Name, Title  
Netsmart Technologies, Inc.  
Address  
Email address  
Telephone:  
Fax:

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for

damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment One, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
  - D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
  - D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
  - D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
  - D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
  - D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
  - D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
  - D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended,

PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other necessary litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired

member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments One and Two;
  - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) reasonably acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any

premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

**The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.**

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations

products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

**b. Workers' Compensation and Employer Liability Insurance**

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
  - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
  - i. The Contractor employs fewer than five (5) employees;
  - ii. The Contractor is a sole proprietor;
  - iii. The Contractor is in the construction business or trades with no employees;
  - iv. The Contractor is in the coal mining industry with no employees;
  - v. The Contractor is a state or local government; or
  - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

**c. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance**

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or

not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

D.34. Equal Opportunity. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
  - (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
  - (2) Layoff or termination;
  - (3) Rates of pay or other forms of compensation; and
  - (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.
- d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

## **E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

- E.3. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.4. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.5. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.6. Contractor Hosted Services Confidential Data, Audit, and Other Requirements
- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
  - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
  - (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.
- If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

- d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
    - (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
      - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: [NUMBER OF HOURS/MINUTES]
      - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: [NUMBER OF HOURS/MINUTES]
    - (2) The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.
- E.7. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less

ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

- E.8. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

- E.9. Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY THAT YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

The sign shall be of the form prescribed by the Comptroller of the Treasury. The contracting state agency shall request copies of the sign from the Comptroller of the Treasury and provide signs to contractors.

- E.10. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

- E.11. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date

the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

- E.12. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII, excluding PHI or PII that may be securely stored in an archived backup file in accordance with Contractor's record retention policies.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.13. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, *et seq.*, and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.
- E.14. Code of Conduct. The Contractor shall ensure that there is a code of conduct applicable to all Contractor employees that covers, at minimum, business practices, clinical practices, and workplace interaction. Contractor employees shall conduct their practice in conformity with all applicable statutes, rules and regulations, and recognized ethical standards pertaining to

Contractor's profession. Contractor shall develop procedures for reporting violations of the ethical standards, which shall be communicated to Contractor's employees, including new hires, on at least an annual basis. Contractor's code of conduct shall prohibit Contractor, its officers, directors, and employees from retaliating against any Contractor employee who reports any violations or acts or omissions that appear to be violations. Contractor's non-retaliation policy shall prescribe discipline for violating the Contractor's code of conduct. Failure to implement a code of conduct in accordance with this section and to adequately address suspected violations of the code of conduct shall entitle the State to exercise any right it has at law or in equity, including, but not limited to termination of this Contract.

- E.15. Additional Subcontracting Requirements. Contractor shall ensure in all subcontracts between it and Contractor's State approved subcontractors that each subcontract shall contain the sections of "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (as identified by the section headings) as these may be modified from time to time. Notwithstanding any use of State approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed by its subcontractors or other providers of goods or services.
- E.16. Rule 2 Compliance. The State and the Contractor shall comply with the obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR §§ 2.1, *et seq.* ("Rule 2").
- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 and its accompanying regulations, and that it will comply with all requirements imposed by Rule 2 during the Term of this Contract.
  - b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 during the Term of this Contract.
  - c. The State and the Contractor will execute such documents, including but not limited to business associate agreements, as required by Rule 2 that are reasonably necessary for the State and the Contractor to comply with Rule 2. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 or if Rule 2 permits the State to receive such information without entering into a business associate agreement or other agreement.

**IN WITNESS WHEREOF,**

**NETSMART TECHNOLOGIES, INC.:**

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**CONTRACTOR SIGNATURE DATE**

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**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES:**

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**MARIE WILLIAMS, COMMISSIONER**

**DATE**

## ATTACHMENT ONE

## ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

|                                      |                             |
|--------------------------------------|-----------------------------|
| SUBJECT CONTRACT NUMBER:             |                             |
| CONTRACTOR LEGAL ENTITY NAME:        | Netsmart Technologies, Inc. |
| EDISON VENDOR IDENTIFICATION NUMBER: | 6819                        |

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

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**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**

**ATTACHMENT TWO****HIPAA BUSINESS ASSOCIATE AGREEMENT  
COMPLIANCE WITH PRIVACY AND SECURITY RULES**

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **The State of Tennessee, Department of Mental Health and Substance Abuse Services** (hereinafter "Covered Entity") and **NETSMART TECHNOLOGIES, INC.** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

**BACKGROUND**

Parties acknowledge that they are subject to the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act), in certain aspects of its operations.

In the course of executing Service Contracts, Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). Said Service Contract(s) are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy and security regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A, C, D and E, which require Covered Entity to have a written memorandum with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard PHI and, therefore, make this Agreement.

**DEFINITIONS**

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103, 164.103, 164.304, 164.501 and 164.504.

- 1.1 "Breach of the Security of the [Business Associate's Information] System" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.3 "Covered Entity" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.5 "Electronic Protected Health Care Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.6 "Genetic Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.7 "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.8 "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.9 "Information Holder" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.10 "Marketing" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

- 1.11 "Personal information" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.12 "Privacy Official" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 1.13 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A, and E.
- 1.14 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.15 "Required by Law" shall have the meaning set forth in 45 CFR § 164.512.
- 1.16 "Security Incident" shall have the meaning set out in its definition at 45 C.F.R. § 160.304, provided, however, the Parties acknowledge and agree that this section \_\_\_\_ constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" means, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts by authorized users, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access to, use, or disclosure of PHI.
- 1.17 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C.

## **2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)**

- 2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity's duties under HIPAA, Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Contracts, or as Required By Law. Business Associate is subject to requirements of the Privacy Rule as required by Public Law 111-5, Section 13404 [designated as 42 U.S.C. 17934] In case of any conflict between this Agreement and the Service Contracts, this Agreement shall govern.
- 2.2 The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.
- 2.3 Business Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), or as Required By Law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate. The Business Associate shall maintain appropriate

documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.

- 2.4 Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential information, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.5 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 2.6 Business Associate shall require its employees, agents, and subcontractors to promptly report, to Business Associate, immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach.
- 2.7 As required by the Breach Notification Rule, Business Associate shall, and shall require its subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.
- 2.7.1 Business Associate shall provide to Covered Entity notice of an Actual Breach of Unsecured PHI as soon as practical and without unreasonable delay upon becoming aware of the Breach.
- 2.7.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.
- 2.7.3 Covered Entity shall make the final determination whether the Breach requires notification and whether the notification shall be made by Covered Entity or Business Associate.
- 2.8 If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity, to PHI in a Designated Record Set to Covered Entity, in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information.
- 2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an individual, and in the reasonable time and manner designated by Covered Entity, provided that Business Associate shall have at least 30 business days from Covered Entity notice to make an amendment.
- 2.10 Business Associate shall make its internal practices, books, and records including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health and Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.

- 2.11 Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528.
- 2.12 Business Associate shall provide Covered Entity or an Individual, in a reasonable time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information which shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].
- 2.13 Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.
- 2.13.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.
- 2.13.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- 2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, in dependent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.
- 2.14 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity
- 2.15 If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.
- 2.16 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

### **3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)**

- 3.1 Business Associate shall fully comply with the requirements under the Security Rule applicable to "business associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.
- 3.2 Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic

PHI that it creates, receives, maintains, or transmits on behalf of the covered entity as required by the Security Rule and Public Law 111-5. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation to certify its compliance with the Security Rule.

- 3.3 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, to agree, by written contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 3.4 Business Associate shall require its employees, agents, and subcontractors to report to Business Associate within five (5) business days, any Security Incident (as that term is defined in 45 CFR § 164.304) of which it becomes aware. Business Associate shall promptly report any Security Incident of which it becomes aware to Covered Entity.
- 3.5 Business Associate shall make its internal practices, books, and records including policies and procedures relating to the security of electronic PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health and Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Security Rule.
- 3.6 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Security Rule.
- 3.7 Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

State of Tennessee Department of Mental Health and Substance Abuse Services:

Division of General Counsel

Leandra Mitchell, Special Counsel

[Leandra.Mitchell@tn.gov](mailto:Leandra.Mitchell@tn.gov) / Telephone: 615-532-0992

Division of Administrative and Regulatory Services

Cynthia Tyler, Assistant Commissioner

Andrew Jackson Building, 6<sup>th</sup> Floor

500 Deaderick Street, Nashville, TN 37243

[Cynthia.tyler@tn.gov](mailto:Cynthia.tyler@tn.gov) / Telephone: 615-532-0410

- 3.8 Business Associate identifies the following key contact persons for all matters relating to this Agreement:

Netsmart Technologies, Inc.  
 NetSmart Counsel  
 4950 College Blvd.  
 Overland Park, KS 66211  
 Email address: [Contracts\\_Notice@ntst.com](mailto:Contracts_Notice@ntst.com)

Business Associate shall notify Covered Entity of any change in the key contact during the term of this Agreement in writing within ten (10) business days.

#### **4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- 4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contract(s), provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity. Business Associate's disclosure of PHI shall be subject to the limited data set and minimum necessary requirements of Section 13405(b) of Public Law 111-5, [designated as 42 U.S.C. 13735(b)]
- 4.2 Except as otherwise limited in this Agreement, Business Associate may use PHI as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.
- 4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is breached immediately upon becoming aware.
- 4.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- 4.5 Business Associate may use PHI to report violations of Law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).
- 4.6 Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of member's personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.
- 4.7 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreements with any Sub contractor or agent which Business Associate provides access to Protected Health Information.
- 4.8 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

#### **5. OBLIGATIONS OF COVERED ENTITY**

- 5.1 Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Covered Entity shall notify Business Associate of any limitations in its notice that affect Business Associate's use or disclosure of PHI.
- 5.2 Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.

- 5.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

## **6. PERMISSIBLE REQUESTS BY COVERED ENTITY**

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rule, if done by Covered Entity.

## **7. TERM AND TERMINATION**

- 7.1 Term. This Agreement shall be effective as of the date on which it is signed by both parties and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, Section 7.3. below shall apply.

### **7.2 Termination for Cause.**

- 7.2.1 This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy and/or Security Rule or this Memorandum.

- 7.2.2 Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

7.2.2.1 Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, or

7.2.2.2 If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and the Service Agreement.

7.2.2.3 If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health and Human Services or the Secretary's designee.

### **7.3 Effect of Termination.**

7.3.1 Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI that is in the possession of sub contractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

7.3.2 In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is unfeasible; Business Associate shall extend the protections of this Memorandum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

## **8. MISCELLANEOUS**

- 8.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and or Security Rule means the section as in effect or as amended.
- 8.2 Indemnity. The Business Associate shall indemnify the Covered Entity and hold it harmless for any third-party claims, losses or other damages arising from or associated with any act or omission of Business Associate under this Agreement. This includes the reasonable costs of responding to a breach of the Agreement or the release of PHI contrary to the terms and conditions of this Agreement, the reasonable costs of responding to a government enforcement action related to the breach, and any resultant fines, penalties, or damages paid by the Covered Entity. This indemnity obligation does not limit Business Associates contractual obligations with respect to insurance coverage under another agreement between Business Associates and Covered Entity.
- 8.3 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including any amendments required by the United States Department of Health and Human Services to implement the Health Information Technology for Economic and Clinical Health and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- 8.4 Survival. The respective rights and obligations of Business Associate under Section 7.3. of this Memorandum shall survive the termination of this Agreement.
- 8.5 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.
- 8.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

**COVERED ENTITY:**

State of Tennessee, Department of Mental  
Health and Substance Abuse Services  
Andrew Jackson Building  
500 Deaderick Street Nashville, TN 37243

Division of General Counsel  
Leandra Mitchell, Special Counsel  
[Leandra.Mitchell@tn.gov](mailto:Leandra.Mitchell@tn.gov) / 615-532-0992

Division of Administrative & Regulatory  
Services  
Cynthia Tyler, Assistant Commissioner  
[Cynthia.tyler@tn.gov](mailto:Cynthia.tyler@tn.gov) / 615-532-0410

**BUSINESS ASSOCIATE:**

Netsmart Technologies, Inc.  
Netsmart Counsel  
4950 College Blvd.  
Overland Park, KS 66211  
[Contracts\\_Notice@ntst.com](mailto:Contracts_Notice@ntst.com)

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of the third (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

- 8.7. Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.
- 8.8. Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- 8.9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA.
- 8.10. Compensation. There shall be **no** remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and services contracts referenced herein.
- 8.11. Security Breach. A violation of HIPAA or the Privacy or Security Rules constitutes a breach of this Business Associate Agreement and a breach of the Service Contract(s) listed on page one of this agreement, and shall be subject to all available remedies for such breach.

IN WITNESS WHEREOF,

NETSMART TECHNOLOGIES, INC.:

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CONTRACTOR SIGNATURE DATE

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PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES:

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MARIE WILLIAMS, COMMISSIONER

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DATE



## CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

|   |                                  |  |                                 |              |                              |
|---|----------------------------------|--|---------------------------------|--------------|------------------------------|
| <b>Begin Date</b><br>July 1, 2016   | <b>End Date</b><br>June 30, 2019 | <b>Agency Tracking #</b><br>33901-xxxxxxx  | <b>Edison Record ID</b>         |              |                              |
| <b>Contractor Legal Entity Name</b><br>Netsmart Technologies, Inc.  |                                  |  | <b>Edison Vendor ID</b><br>6819 |              |                              |
| <b>Service Caption</b> (one line only)<br>Maintenance and Support of the AVATAR Solution  |                                  |  |                                 |              |                              |
| <b>Subrecipient or Vendor</b><br><input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor   |                                  | <b>CFDA #</b><br>N/A   |                                 |              |                              |
| <b>Funding —</b>  |                                  |  |                                 |              |                              |
| <b>FY</b>   | <b>State</b>                     | <b>Federal</b>   | <b>Interdepartmental</b>        | <b>Other</b> | <b>TOTAL Contract Amount</b> |
| 2017  | \$4,168,253.81                   |  |                                 |              | \$4,168,253.81               |
| 2018  | \$2,152,397.56                   |  |                                 |              | \$2,152,397.56               |
| 2019  | \$2,184,173.91                   |  |                                 |              | \$2,184,173.91               |
|   |                                  |  |                                 |              |                              |
|   |                                  |  |                                 |              |                              |
| <b>TOTAL:</b>   | <b>\$8,504,825.28</b>            |  |                                 |              | <b>\$8,504,825.28</b>        |
| <b>American Recovery and Reinvestment Act (ARRA) Funding:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   |                                  |  |                                 |              |                              |
| <b>Ownership/Control</b>  |                                  |  |                                 |              |                              |
| <input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female     |                                  |  |                                 |              |                              |
| <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input checked="" type="checkbox"/> NOT Minority/Disadvantaged |                                  |  |                                 |              |                              |
| <input type="checkbox"/> Other:   |                                  |  |                                 |              |                              |
| <b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)   |                                  |  |                                 |              |                              |
| <input type="checkbox"/> RFP  |                                  | The procurement process was completed in accordance with the approved RFP document and associated regulations.   |                                 |              |                              |
| <input type="checkbox"/> Competitive Negotiation  |                                  | The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.  |                                 |              |                              |
| <input type="checkbox"/> Alternative Competitive Method   |                                  | The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.  |                                 |              |                              |
| <input checked="" type="checkbox"/> Non-Competitive Negotiation   |                                  | The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms and price.   |                                 |              |                              |
| <input type="checkbox"/> Other  |                                  | The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class." |                                 |              |                              |



|   |                                |                     |
|---|--------------------------------|---------------------|
| <b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations. |                                | <b>OCR USE - FA</b> |
| <b>Speed Chart (optional)</b>   | <b>Account Code (optional)</b> |                     |



**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES  
AND  
NETSMART TECHNOLOGIES, INC.**

This Contract, by and between the State of Tennessee, Department of Mental Health and Substance Abuse Services, hereinafter referred to as the 'State' and Netsmart Technologies, Inc., hereinafter referred to as the "Contractor," is for the provision of Maintenance and Support of the AVATAR solution, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation  
Contractor Place of Incorporation or Organization: Delaware  
Contractor Edison Registration ID (Edison Vendor ID) # 6819

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall deliver the application and systems software for the AVATAR Software (also referred to as "MyAvatar") in accordance with the following requirements:
- a. On-going Services for Current Applications. The Contractor shall continue to provide application and systems maintenance and support for the following applications. The State may, at its convenience and without cause, terminate the maintenance of a licensed program, by giving a written notice to the Contractor at least thirty (30) days prior to the actual termination.
- (1) AVATAR Practice Management (PM);
  - (2) AVATAR Master Patient Index (MPI);
  - (3) AVATAR Client Funds Management System (CFMS), also known as "Client Banking";
  - (4) AVATAR Clinician Workstation (CWS);
  - (5) Decision Support System (DSS);
  - (6) Direct Access/Structured Query Language (DA/SQL);
  - (7) Rapid Application Development Plus (RADplus) Modeling Tool;
  - (8) Caché;
  - (9) AVATAR Incident Tracking;
  - (10) AVATAR HL-7 ADT Interfaces to the State's pharmacy application, implemented at one (1) test site and four (4) production sites; and
  - (11) International Classification of Diseases, Tenth Edition (ICD-10) and Diagnostic and Statistical Manual of Mental Health Disorders, Fifth Edition (DSM-5) Diagnoses Content Subscription (non-perpetual).
- b. Change Orders. Both parties agree that the State may request modifications and enhancements to the software using a six (6)-step Change Order process used to define, specify, develop, test, and implement changes to the software. The purchase of



additional AVATAR System Software modules may be authorized via the Change Orders process. These six (6) steps are:

- (1) The State prepares specifications for a modification or enhancement;
- (2) The Contractor prepares an estimate of hours required and the delivery date and cost of the Change Order, for the development/change of the software;
- (3) The State accepts the estimate and authorizes the work via a separate Change Order document signed by both parties or rejects the estimate and disapproves the work;
- (4) The Contractor delivers the software product or change as defined below;
- (5) The State accepts the software product or change; and
- (6) The State shall pay Contractor's invoice for the work authorized, up to the amount of the estimate.

A.3. Software Documentation. The Contractor shall provide the State with online documentation for all licensed programs. The State may print hardcopies for internal use only, and will not alter or eliminate any copyright notice on any copy of the documentation.

A.4. System Warranty. Pursuant to the terms outlined in A.5., the Contractor expressly warrants licensed software provided to meet Contractor's specifications, including software distributed by CareFusion Solutions, LLC, Lexmark, LLC, and Inpriva, Inc, provided under this Contract by Contractor as described in Attachment 3 ("Third Party Supplement") will be properly functioning and compliant with the terms of the Contract. The warranty period shall extend through the end of the Contract period. Throughout the warranty period, the Contractor shall provide corrections for any errors and defects in the AVATAR software reported by the State, and the Third Party Products and to provide such corrections in a timeframe mutually determined by the State and the Contractor.

A.5. Software Maintenance and Support – Contractor Responsibilities. The Contractor shall:

- a. Software: Maintain the current version of the licensed programs in substantial conformance with its Specifications as amended from time to time by the Contractor, and with applicable Federal regulatory requirements and laws. The Contractor will use commercially reasonable efforts to either correct any reproducible problems or defects in the then current or immediately prior release of licensed programs by the Contractor which prevent it from operating in substantial conformance with the specifications and applicable Federal regulatory requirements or provide a commercially reasonable alternative that will substantially conform to the specifications and applicable Federal regulatory requirements and laws.
- b. Hardware: If Contractor determines that any contractor provided medication dispensing equipment ( ) cannot be made properly performing through repair services, then Contractor will replace portions of the medication dispensing hardware or restore the functionality of the system, as needed. During any optional term beyond 5 years where State is allowed to continue use of hardware, Contractor will restore the functionality of any Contractor provided medication dispensing hardware which is not properly performing to the best of its ability, but will have no obligation to replace hardware or any integral licensed programs for medication dispensing equipment.
  - Interface Modifications. If Contractor modifies an interface between a Contractor provided medication dispensing equipment as part of its support services, State will timely test the modified interface. State's sole remedy related to interface



functionality will be for Contractor to modify the interface to provide full functionality.

- Replacement Pads. Contractor will adjust and replace non-consumable parts in Contractor provided medication dispensing equipment, which are not properly performing for any reason other than an External Cause (as defined below). Contractor will furnish replacement parts on an exchange basis.
  - External Cause. Contractor is not obligated to perform support services for any part of the medication dispensing equipment which is not properly performing to the extent caused by: (i) abuse, misuse or vandalism; (ii) unauthorized repairs, including modification, alteration and adjustment; (iii) failure of equipment not supplied by Contractor; (iii) a computer virus or other disabling code introduced by a source other than Contractor; (iv) any support activity that is a State obligation as defined in this agreement; or (v) State prevents or refuses installation of an Update or Upgrade which State has purchased or is otherwise entitled to receive. If Client requests that Contractor attempt to correct a problem with a medication dispensing equipment attributable to an External Cause, then Contractor will attempt to perform repair services on a time and materials basis at Contractor's then-current rates and prices.
- Preventative Maintenance. Contractor will perform onsite preventative maintenance, following State access policies, of medication dispensing equipment in accordance with Contractor's then-current preventive maintenance schedule.
- Contractor will not be obligated to provide support services for State equipment that is not Contractor provided medication dispensing equipment, including but not limited to State's equipment, software and personal peripheral devices (e.g., mobile devices, printers) used in conjunction with Contractor provided medication dispensing equipment.
- Support services do not include the replacement or installation of consumables for Contractor provided medication dispensing equipment, including but not limited to batteries, paper and toner.
- Notwithstanding any other provision to the contrary set forth herein, Contractor shall provide support and maintenance for the Contractor provided medication dispensing equipment only with respect to the two (2) most recent Upgrades.
- Any equipment service not specifically identified herein as a component of the support services to be provided may be provided by Contractor under a authorized Change Order, agreement amendment or separate agreement between the State and Contractor.

- c. Remote Support Services. Contractor will provide remote support services. State must permit access to the integral licensed programs for medication dispensing hardware remotely. State will provide Internet access and appropriate firewall modifications, per State policies, to enable connectivity, if applicable to provide support. To the extent State's system, connectivity, or personnel prevent Contractor from performing remote support services where such services could be provided remotely, State will pay Contractor on a time and materials basis for any onsite services required. State will permit Contractor to install and maintain at State sites the licensed programs necessary to allow the deployment of Updates and Upgrades (defined below) remotely for integral licensed programs for medication dispensing equipment. Where remote services support is not practical and direct access to Contractor provided medication dispensing equipment is required, State will allow Contractor such access following State policies.
- Updates means a bug fix, patch, error correction, virus update, minor enhancement or modification to existing features to maintain the security or operation of the integral licensed programs for medication dispensing equipment. If Contractor generally releases an Update to the integral licensed programs for medication dispensing equipment, then Contractor will install the Update for licensed programs at State sites using remote support services or by other means chosen by Contractor and allowed by State policy. Contractor will deliver



notice to State of the Update. State will promptly test the connections between the integral licensed programs for medication dispensing equipment and State's network and Contractors provided information system.

- Upgrade means a major enhancement, new feature or other improvement to the integral licensed programs for medication dispensing equipment, but does not include any hardware, software other than licensed programs for medication dispensing equipment, or any other software that Contractor generally licenses separately. If Contractor generally releases an Upgrade to the integral licensed programs for medication dispensing equipment, Contractor will install the Upgrade using remote services or by other means chosen by Contractor and allowed by State policy. Contractor will deliver notice to State of the Update. State will promptly test the connections between the integral licensed programs for medication dispensing equipment and State's network and Contractors provided information system.
- d. Onsite Support Services. State may cancel scheduled onsite support services by delivering notice to Contractor no less than two (2) business days prior to the start date. If State fails to provide such notice or otherwise prevents Contractor from performing scheduled onsite support (allowed within State Policies), then the priority response times provided in this agreement will not be honored. During any onsite support services, Contractor Personnel shall not handle State's medications. State must be present and capable of monitoring Contractor Personnel during any activity involving equipment and/or licensed programs in which medications are present. If State fails to do so, then State will reimburse Contractor for any expenses related to re-scheduling such activity.
- e. If analysis by the Contractor indicates that a reported problem is caused by a reproducible problem or defect, the Contractor will use commercially reasonable efforts to provide support services in accordance with the following prioritization of reported problems:
- Priority 1: Will be assigned when the licensed programs or a material program function component of the licensed programs is non-operational as a result of a defect [in Production environment only] such as the Production system cannot be accessed or utilized in any capacity, a direct patient safety issue is present, or a HIPAA compliance violation as a result of a server incident or Contractor application defect. Best efforts will be made to correct Priority 1 problems, or to provide a plan for such correction, within two (2) business days.
- Priority 2: Will be assigned to Production defects that result in functions that have a significant negative impact on daily operations but do not constitute as a "System Down". A workaround may be available and/or the capacity to maintain daily business functionality. Commercially reasonable efforts will be made to correct Priority 2 problems, or to provide a plan for such correction, within five (5) business days.
- Priority 3: Will be assigned for system defects that result in functions that have no major impact on daily operations; an issue that allows for the continuation of function, including issues in which a reasonable workaround is available. Commercially reasonable efforts will be made to correct Priority 3 problems, or to provide a plan for such correction, within ten (10) business day.
- Priority 4: Will be assigned to cosmetic defects that do not affect system usability or non-defect related requests including, but not limited to, system set up/configuration, training, functionality questions, documentation, portal access, and upgrade requests. Commercially reasonable efforts will be



made to address Priority 4 issues, or to provide a plan for such correction, within fifteen (15) business day.

- f. On a timely basis, the Contractor shall also provide the State with:
- (1) Such updates as are distributed without charge to other similar clients which reflect modifications and incremental improvements made to the licensed programs by the Contractor;
  - (2) An opportunity to obtain enhancements to the licensed programs for which charges are imposed on the same terms as such enhancements are generally made available to other clients; and
  - (3) Mandatory upgrades to the licensed programs available to the State at no charge while this Contract is in effect. If the State requires assistance from the Contractor to install and configure any upgrade, the Contractor will provide support as a separate charge in addition to the annual support services fees. If the State fails to implement any mandatory upgrades, the Contractor may decline to renew this Contract on the next "anniversary date" unless the State brings the licensed programs up to the then current level. "Anniversary date" is defined as the first day of the State's fiscal year period for each of the fiscal years covered by this Contract. The Contractor may charge, and the State will pay, for software and services necessary to bring the licensed programs up to Contractor's then-current level before the Contractor will certify that the State is again eligible for maintenance hereunder.
- g. The Contractor will make technical support personnel available from 9:00 a.m. to 6:00 p.m., Eastern Standard Time, Monday through Friday, exclusive of Contractor holidays. The Contractor shall be provided access to the State's system remotely for troubleshooting and installation assistance.
- h. If reasonable analysis by the Contractor indicates that a reported problem or defect is caused by a problem related to hardware used by the State, the hardware's system software, or applicable software other than licensed programs, or the State's misuse or modification of the licensed programs, the Contractor's responsibility will be limited to the correction of the portion, if any, of the problem caused by defect in the licensed programs.
- i. Contractor support for all maintenance activities not covered under Section A.6 (State Obligations), including but not limited to, (i) all medication dispensing equipment break/fix activities that require a trained service technician for triage, troubleshooting and service part replacement; (ii) server application, (iii) defects in medication dispensing equipment (iv) station database and operating system services, (v) support for server hardware acquired from Contractor, and (vi) interfaces.
- j. Contractor will schedule and deploy Contractor approved software patches for products that are not the responsibility of State as set forth in Section A.6 (e.g., all stations, servers that are not maintained by State).
- k. Contractor will provide training one time (unless agreed to in a Change Order) to a mutually agreed-upon number of designated State personnel to perform the activities set forth under Section A.6 (Client Obligations) item (k).

**A.6. Software Maintenance and Support – State's Responsibilities. The State shall:**

- a. The State will make requests for support services by giving the Contractor written notice specifying a problem or defect in the licensed programs. In making a verbal request for Support Services, the State will provide the Contractor within twenty four (24) hours after



such verbal notice with such written information and documentation as may be reasonably prescribed by the Contractor.

- b. The State will immediately inform the Contractor in writing of any modifications, additions or alterations to the licensed programs. If any modifications, additions or alterations of any kind or nature are made to the licensed programs by the State or anyone acting with the consent of or under the direction of the State, the Contractor may immediately terminate this contract without further obligation or liability to the State.
- c. The State understands and agrees that it is and will be responsible for establishing and maintaining a procedure for backing up its data in accordance with industry standards, and for maintaining procedures for reconstruction and/or recompilation of any and all data lost or destroyed during the use of the licensed programs, or storage of the data. The Contractor will not be liable under any circumstances for any damages caused by or arising from such lost or destroyed data. The Contractor will use commercially reasonable efforts, on a time and material basis to assist the State in reconstruction and/or recompilation of such data.
- d. State will provide services for (i) State's side of medication dispensing equipment (station) and its server network connectivity, (ii) any State provided server hardware for the operation of medication dispensing equipment, and such server-based, non-application related system performance and downtime, e.g., operating system, database issues, host system etc. for such hardware.
- e. State will provide (i) station and server environment, e.g., power and plugs, etc., (ii) State data center (as applicable) and network availability, (iii) unless provided by Contractor, conformance with minimum server environment requirements for the medication dispensing equipment as set forth by Contractor, and (iv) unless provided by Contractor, virtual platform approved by Contractor for all Contractor provided virtual machine deployments as set forth by Contractor.
- f. State will provide support for all non-Contractor provided peripheral products, e.g., mobile devices.
- g. Contractor will inform State of training logistic requirements and State will provide appropriate resources, space and access to applicable system or equipment at the agreed upon training site to support training activities provided by Contractor to State.
- h. For the integral licensed programs for use with medication dispensing equipment deployed using non-Contractor provided virtual machine technology, State will provide all services for (i) database backup and recovery, (ii) operating system patches, updates and security, and (iii) the performance of the applicable relational database server (e.g., [REDACTED] instance as set forth by Contractor.
- i. For products that support Active Directory capability, and State agrees to use Active Directory, State will provide integrated Active Directory services and user administration, e.g., passwords, user log-in, etc.
- j. Where applicable, State will implement a network data backup capability that is remote from integral licensed programs for use with medication dispensing equipment in accordance with guidelines provided by Contractor.
- k. State will provide for medication dispensing equipment and its integral licensed programs (i) basic product feature support for internal staff, including but not limited to general product use, facility-specific and general system settings and user log-in practices, (ii) basic hardware issue resolution, including drawer "jams" due to overfilling, cleaning of biometric identification devices, network cabling issues, and general equipment cleaning, and (iii) State-specific network connectivity and configuration.



- I. Client will schedule and deploy Contractor approved software patches to servers not provided by Contractor (e.g., operating system, anti-virus, and product patches) for integral licensed programs for use with medication dispensing equipment.

A.7. Compliance with Enterprise Information Security Policies. The Contractor is required to meet all the security controls stated in the Tennessee *Enterprise Information Security Policies* ([http://www.tn.gov/assets/entities/finance/oir/attachments/PUBLIC-Enterprise-Information-Security-Policies-v2.0\\_1.pdf](http://www.tn.gov/assets/entities/finance/oir/attachments/PUBLIC-Enterprise-Information-Security-Policies-v2.0_1.pdf)), and conform to all applicable State and Federal laws regarding information security. As additional State and Federal Security and Regulatory requirements are imposed, the Contractor shall ensure that the environment content and applications are kept up to date with the emerging requirements.

A.8. Compliance with State's Technology Standards.

- a. In the event that the Contractor wishes to introduce non-State standard software or hardware components ("products") into the State's technology environment, in support of, or related to, the services the Contractor is providing under this Contract, the Contractor must make a formal written request to the State prior to introducing the non-State Standard Products. Such a request is referred to as a "Non-State Standard Product Request."

- b. Non-State Standard Products are defined as:

Any software that is not listed and designated as "Current" in, or is not compatible with the standards listed in the *Enterprise Technology Architecture*; or

Any hardware that is not listed and designated as "Current" in, or is not compatible with standards listed in the *Enterprise Technology Architecture*.

- c. The State's Department of Finance and Administration, Office for Information Resources (OIR), shall consider the Non-State Standard Product Request and shall render a written determination, in the State's best interest, to approve or disapprove the request. If OIR disapproves the request, the Contractor agrees to withdraw the request and substitute State Standard Products in place of the Non-State Standard Products, at no additional cost to the State.

A.9. Encryption. All data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the data. The Contractor shall ensure drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data. The solution should support 256 bit encryption or latest State standard. This provision also applies to the data-at-rest and data-in-transit protections provided by the solution, even if protection of data-at-rest and/or data-in-transit is implemented by external modules (rather than the solution itself).

A.10. Separation of Duties. To reduce the risk of accidental change or unauthorized access to operational software and business data, there should be a separation of duties based on development, test, and operational facilities.

Confidential data should not be copied into test and development environments. Development and test environments should not be directly connected to production environments. Data and operational software test systems should emulate production systems as closely as possible. The Contractor shall limit staff knowledge of State data to that which is absolutely necessary to perform job duties.

A.11. Removable Media. Removable media should be sanitized prior to removing it from the facilities for maintenance or repair. Removable media should be disposed of securely when no longer required, using approved State procedures. Removable media containing confidential information, confidential data, or sensitive data must be protected against unauthorized access, misuse or corruption during transport.



- A.12. Protection of Information. The Contractor shall be responsible for properly protecting all information used, gathered, or developed as a result of work under this contract. It is anticipated that this information will be gathered, created, and stored within the primary work location. If Contractor personnel must remove any information from the primary work area they should protect it to the same extent they would their own proprietary data and/or company trade secrets. The use of any information that is subject to the Privacy Act will be utilized in full accordance with all rules of conduct as applicable to Privacy Act Information. The State will retain unrestricted rights to State data. The State also maintains the right to request full copies of the data at any time.

The data that is processed and stored by the various applications within the network infrastructure contains financial data as well as Personally Identifiable Information (PII). This data shall be protected against unauthorized access, disclosure or modification, theft, or destruction. The Contractor shall ensure that the facilities that house the network infrastructure are physically secure. The data must be available to the State upon request within one business day or within the timeframe specified otherwise, and shall not be used for any other purpose other than that specified herein. The Contractor shall provide requested data at no additional cost to the State..

- A.13. Confidentiality and Non-Disclosure. The State has unlimited data rights to all deliverables and associated working papers and materials.

All documents produced for this project are the property of the State and cannot be reproduced, or retained by the Contractor. All appropriate project documentation will be given to the State during and at the end of this contract. The Contractor shall not release any information without the written consent of the State. Personnel working on any of the described tasks may, at State request, be required to sign formal non-disclosure and/or conflict of interest agreements to guarantee the protection and integrity of State information and documents. Data will only be disclosed to authorized personnel on a "Need-To-Know" basis. The Contractor shall ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of this information, data, and/or equipment is properly protected. Any information made available to the Contractor by the State shall be used only for the purpose of carrying out the provisions of this contract and shall not be divulged or made known in any manner to any persons except as may be necessary in the performance of the contract. In performance of this contract, the Contractor assumes responsibility for protection of the confidentiality of State records. Each officer or employee of the Contractor to whom any State record may be made available or disclosed shall be notified in writing by the Contractor that information disclosed to such officer or employee can be used only for that purpose and to the extent authorized herein. Further disclosure of any such information, by any means, for a purpose or to an extent unauthorized herein, may subject the offender to criminal sanctions.

- A.14. Data Ownership. Data created and managed by the State remain the sole property of the State. The Contractor will not review, share, distribute, print, or reference any Client's data except as expressly defined by the terms of a Contract between the Contractor and the State. The Contractor may at times view or access individual records and State configuration details for the purpose of preventive maintenance or diagnosis and resolution of system problems or user support issues.
- A.15. Transfer of Data. Upon termination of this Contract all data created and managed by the State on Contractor's equipment shall be removed and returned to the State in a usable format acceptable to the State, unless the parties enter into a similar, successive Contract. Contractor must perform a sanitization of confidential digital data and destruction of hard copy confidential data when the contract ends.

- A.16. System Availability and performance (if Contractor is hosting Licensed Software).

In addition to A.16, the State security requirements referred to in Section A.17 will also apply.



- a. System shall be available continuously, as measured over the course of each calendar month, an average of 99% of the time. "Available" means the System shall be available for access and use by the State to conduct normal business associated with this system.
- b. For purposes of calculating the availability percentage, the following are "Exceptions" to the service level requirement:
  - (1) regularly scheduled downtime (which shall occur only upon advance written notice during non-core business hours); or
  - (2) loss of the State's Internet connectivity
- c. Consistent and responsive system performance is important to provide uninterrupted availability of means to dispense and administer medication to patients, even during peak workload times. System performance will be measured in terms of response time utilizing Netsmart's Guardiant™ UX KPI ScoreCard. The average System response time shall be no more than one (1) to three (3) seconds. Ninety five percent (95%) of all response time should be less than two (2) seconds. The benchmark measurement will be set behind the Contractor firewall and if the parties determine there are substantial differences from that response time the parties will work in good faith to troubleshoot the State network latency issues as it relates to the Contractor solution.
- d. The State must notify Contractor as soon as possible if system performance or availability is outside of the specified requirements. Notification must happen through telephone and/or email to contacts provided by Contractor. Acknowledgment of the notification must be logged. The notification should be specific and detailed. The Contractor will provide frequent and regular updates until system performance or availability has returned to normal as per the specified requirements.

A.17. State Security Requirements (if Contractor is hosting Licensed Software).

- a. Malicious Code.  
The Contractor shall represent and warrant that the Software, Application and Network shall be free from all computer viruses, worms, time-outs, other harmful or malicious code intended to or which may damage, disrupt, inconvenience or permit access to the Software user's or another's software, hardware, networks, data or information. If the Contractor is aware of any security incident, vulnerability or other malicious code within their software or network the Contractor shall immediately disclose this information to the State via telephone and e-mail, as well as identify a timeline to mitigate and eliminate the risk.
- b. Data Location.  
The Contractor shall provide its services to the State and its end users solely from data centers in the United States of America. Storage of State data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access State data remotely only as required to provide technical support solely within the U.S.
- c. Import and Export of Data.  
The State shall have the ability to Import or export data piecemeal or in entirety at its discretion without interference from the Contractor. This includes the ability for the State to import or export data to or from other service providers.
- d. Security Incident and Data Breach.  
The Contractor shall inform the State of any security incident or data breach. For purposes of this Contract "Security Incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor. The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the State should be handled on an urgent as-needed basis, as



part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

The Contractor shall report any security incident to the appropriate State identified contact immediately. If the Contractor has actual knowledge of a confirmed data breach that affects the security of any State content that is subject to applicable data breach notification law, the Contractor shall

1. Promptly notify the appropriate State identified contact within 24 hours or sooner, unless shorter time is required by applicable law,
2. Take commercially reasonable measures to report perceived security incidents to address the data breach in a timely manner
3. Cooperate with the State as reasonably requested by the State to investigate and resolve the data breach,
4. Promptly implement necessary remedial measures, if necessary, and
5. Document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

Unless otherwise stipulated, if a data breach is a direct result of the Contractor breach of its contract obligation to encrypt personal data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) a website or a toll-free number and call center for affected individuals required by state law - all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.

e. Access to Security Logs and Reports.

The Contractor shall provide access to reports generated by Netsmart's Guardian™ UX KPI ScoreCard. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all State files related to this contract.

f. Security Audits.

The State may conduct audits of Contractor's compliance with the State's Enterprise Information Security Policy ("The Policy") or under this Contract, including those obligations imposed by Federal or State law, regulation or policy. The Policy, as may be periodically revised, can be located at the following link: [http://www.tn.gov/assets/entities/finance/oir/attachments/PUBLIC-Enterprise-Information-Security-Policies-v2.0\\_1.pdf](http://www.tn.gov/assets/entities/finance/oir/attachments/PUBLIC-Enterprise-Information-Security-Policies-v2.0_1.pdf)

The State's right to conduct security audits is independent of any other audit or monitoring required by this Contract. The timing and frequency of such audits shall be at the State's discretion and may, but not necessarily shall, be in response to a security incident.

A security audit may include the following: (i) review of access logs, screen shots and other paper or electronic documentation relating to Contractor's compliance with the Policy. This may include review of documentation relevant to subcontractors or suppliers of security equipment and services used with respect to State data; (ii) physical inspection of controls such as door locks, file storage, communications systems, and employee identification procedures; and (iii) interviews of responsible technical and management personnel regarding security procedures.

Contractor shall provide reports or additional information upon request of the state and access by the State or the State's designated staff to Contractor's facilities and/or any location involved with providing services to the State or involved with processing or storing State data, and Contractor shall cooperate with State staff and audit requests submitted under this Section. Any confidential information of either party accessed or disclosed during the course of the security audit shall be treated as set forth under this Contract or federal or state law or regulations. Each party shall bear its own expenses incurred in the course of conducting this security audit. Contractor shall at



its own expense promptly rectify any material non-compliance with the Policy or other requirements identified by this security audit and provide proof to the State thereof.

g. Change Control and Advance Notice.

The Contractor shall give advance notice to the State of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

h. Security Certification, Accreditation, Audit.

At the State's request, the Contractor shall provide proof of any security certifications, accreditation, or audit on a yearly basis to the State to validate the hosting solution security. (Examples: SOC 2 Type II/ SOC 3, ISO 27001).

i. Physical Security.

All enterprise data processing facilities that process or store data shall have multiple layers of physical security. Each layer should be independent and separate of the preceding and/or following layer(s).

All facilities should have, at a minimum, a single security perimeter protecting it from unauthorized access, damage and/or interference. Secure areas should be protected by appropriate entry controls to restrict access only to authorized personnel. Procedures for working in secure areas should be created and implemented. Access points such as delivery and loading areas and other points where unauthorized persons could enter the premises should be controlled, and if possible, isolated from information processing facilities. Equipment should be located in secured areas or protected to reduce the risks from environment threats and hazards, and to reduce the opportunities for unauthorized access. Secured cabinets or facilities should support further segregation based on role and responsibility.

Users should ensure that unattended data processing equipment has appropriate protection. All systems and devices owned and operated by or on behalf of the State should be configured to clear and lock the screen or log the user off the system after a defined period of inactivity.

The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. The Contractor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

j. Assessment of the System.

1. The Contractor shall comply with requirements, including making available any documentation, physical access, and logical access needed to support this requirement. The Contractor shall create, maintain and update logs and documentation according to certification standard controls.
2. Information systems must be reassessed by the State whenever there is a significant change to the system's security posture.
3. The State reserves the right to review the results of Netsmart's certified third party Penetration Testing. If the State exercises this right, the Contractor shall allow State employees (or designated third parties) to review, in confidence, Security Assessment activities results to include control reviews. Review activities include but are not limited to scanning operating systems, web applications, wireless scanning; network device scanning to include routers, switches, and firewall, and IDS/IPS; databases and other applicable systems, including general support structure, that support the processing, transportation, storage, or security of State information for vulnerabilities.
4. The Contractor is responsible for mitigating all material security risks found during Assessment and continuous monitoring activities. All high-risk vulnerabilities and moderate



risk vulnerabilities must be mitigated within 30 days from the date vulnerabilities are formally identified or, depending on severity, a commercially reasonable period of time. The State and Contractor will determine the risk rating of vulnerabilities.

The Contractor shall certify applications are fully functional and operate correctly in accordance with their specifications using the Standard State Desktop Configuration that meets the minimum requirements for desktop configurations provided by Contractor. The standard installation, operation, maintenance, updates, and/or patching of software shall not alter the configuration settings from the approved configuration. Applications designed for normal end users shall run in the standard user context without elevated system administration privileges. Contractor shall provide all services requested through this Contract within the context of the technical environment described in *Tennessee Information Resources Architecture*.

- k. Click Through Licenses.  
No "click through" licenses or provisions will be allowed during this contract.
- l. System Patching and Penetration Scanning.
  - 1. The Contractor will conduct periodic and special vulnerability scans, and install software / hardware patches and upgrades to protect all automated information assets. These audits shall be performed by a third party qualified to perform such tests, including penetration tests of the internal and external user interface, annually.
  - 2. The Contractor is responsible for the costs of this testing.
  - 3. Upon request by the State, the Contractor must report the results of the vulnerability scans described above to the State within 10 calendar days following the request.
  - 4. The Contractor must address and resolve any material vulnerability as directed by the State. The Contractor must arrange for repeat testing to ensure that all identified vulnerabilities have been addressed as directed by the State.

A.18. Products and Services. The following products and services may be purchased by the State at any time during the term of this contract for the fees stated in C.3 so long as Netsmart is then distributing and supporting such products and services. Prior to commencement of installation and product implementation activities the parties will agree upon a scope of work, project plan and specific payment milestones related to the product and services being purchased. Payment milestones will require the delivery and receipt of tangible deliverables.

Table A.18 - A

| Ref | Area                          | Service Type          | Service Title  | Service Description   |
|-----|-------------------------------|-----------------------|--|---|
| a.  | Practice Management Expansion | License               | Avatar RADplus Named User: 1218 - 1400 Named User Expansion  | License fee to expand the number of users on the Avatar software application.             |
| b.  | Practice Management Expansion | License               | POS and Batch Scanning Powered by Perceptive   | License fee to scan and store documents into the patient's records.                       |
| c.  | Practice Management Expansion | License               | Avatar Electronic Signature License.   | License fee for Electronic Signature integration into the patient record.                 |
| d.  | Practice Management Expansion | License               | Avatar Addiction Severity Index (ASI)  | License fee for Addiction Severity Index content and integration into the patient record. |
| e.  | Practice Management Expansion | Professional Services | Implementation: Clinical Workstation (CWS), Electronic Signature, Addiction Severity Index, POS/Batch Scanning | Project Management and Implementation services for Practice Management expansion.         |



| Ref | Area  | Service Type                 | Service Title   | Service Description   |
|-----|---|------------------------------|---|---|
| f.  | Practice Management Expansion                   | Subscription (non-perpetual) | Wiley Content Libraries Subscription                                    | Subscription fee for access to treatment plan content library   |
| g.  | Practice Management Expansion                   | Subscription (non-perpetual) | myLearningPointe Subscription and Training as a Service Subscription    | Subscription fee for access to training specialists and learning management system.   |
| h.  | Medication Management Expansion                 | License                      | RxConnect Browser License Fee   | License for the Pharmacy Module, RxConnect.   |
| i.  | Medication Management Expansion                 | License                      | Crystal Reports Developer's Version License                             | License Fee for advanced report writing functionalities specific to Pharmacy Management   |
| j.  | Medication Management Expansion                 | License                      | Avatar Order Entry Module License                                       | License Fee for Computerized Physician Order Entry  |
| k.  | Medication Management Expansion                 | License                      | Avatar eMAR Module License  | License Fee for Electronic Medication Administration Record   |
| l.  | Medication Management Expansion                 | Professional Services        | Implementation: Medication Management                                   | Project Management and Implementation services for Medication Management expansion.   |
| m.  | Medication Management Expansion                 | Hardware                     | RxScan 2D USB   | Prescription scanning equipment   |
| n.  | Medication Management Expansion                 | Subscription (non-perpetual) | RxScan NDC Translator   | Software for prescription scanning equipment  |
| o.  | Medication Management Expansion                 | Subscription (non-perpetual) | Ultimedex Suite Subscription  | Subscription fee for access to Ultimedex drug-drug and drug-allergy interaction checking, medication instructions, and dosing indications including integration into the electronic clinical record software. |
| p.  | Interoperability, Consumer Use, Reporting Tools | Professional Services        | Implementation: All Interoperability and Reporting Tool Implementations | Project Management and Implementation services for Interoperability, Consumer Use, Reporting Tools.   |
| q.  | Interoperability, Consumer Use, Reporting Tools | Subscription (non-perpetual) | CareConnect Base  | Subscription fee for access to connect the four RMHI's with other providers, hospitals, physicians, HIE, Labs, Referral Networks, Immunization and Syndromic Surveillance systems                             |
| r.  | Interoperability, Consumer Use, Reporting Tools | Subscription (non-perpetual) | CareConnect Referral Connector  | Subscription fee for access to connect the 4 RMHI's directly to another inpatient or outpatient provider  |



| Ref | Area  | Service Type                        | Service Title  | Service Description  |
|-----|---|-------------------------------------|--|--|
| s.  | Interoperability ,<br>Consumer Use ,<br>Reporting Tools | Subscription<br>(non-<br>perpetual) | CareConnect Lab Orders<br>(Outbound)                                 | Subscription fee to allow for real<br>time electronic submittal of Lab<br>Orders   |
| t.  | Interoperability ,<br>Consumer Use ,<br>Reporting Tools | Subscription                        | CareConnect Lab Results<br>(Inbound)                                 | Subscription fee to access real<br>time electronic Lab Results   |
| u.  | Interoperability ,<br>Consumer Use ,<br>Reporting Tools | Subscription                        | Direct Message Mailbox-<br>CareConnect                               | Subscription fee for Direct<br>Messaging that enables care<br>providers to communicate with a<br>patient's care team outside the<br>agency.            |
| v.  | Hosting   | License                             | Plexus Cloud Hosting - Avatar  | License fee for Avatar system<br>vendor hosting including disaster<br>recovery for up to 400 concurrent<br>system users                                |
| w.  | Hosting   | License                             | Plexus Cloud Hosting - Avatar<br>Data Warehouse                      | License fee for Avatar Vendor<br>Hosted Data Warehouse Server  |
| x.  | Hosting   | License                             | Plexus Cloud Hosting -<br>Perceptive document<br>management software | License for Document Capture<br>point of service and batch<br>scanning hosting including<br>disaster recovery for up to 400<br>concurrent system users |
| y.  | Hosting   | License                             | Plexus Cloud Hosting -<br>RxConnect (10 Users)                       | License fee for RxConnect<br>(Pharmacy expansion) in a<br>hosted environment.  |
| z.  | Hosting   | Professional<br>Services            | Hosting Set-Up, Hosting<br>Cutover.                                  | Project Management and<br>Implementation services to set<br>up vendor hosted environment.  |
| aa. | Hosting   | Professional<br>Services            | Hosting Migration<br>Implementation                                  | Project Management and<br>Implementation services to<br>migrate existing product and data<br>to the vendor hosted<br>environment.                      |

The following products and services may be purchased by the State at any time during the term of this contract for the fees stated in C.3 so long as Netsmart is then distributing and supporting such products and services. Prior to commencement of installation and product implementation activities the parties will agree upon a scope of work, project plan and specific payment milestones related to the implementation of Automated Dispensing Machines (ADM).



Table A.18 B

| Ref | Area                            | Service Type                 | Service Title   | Service Description   |
|-----|---------------------------------|------------------------------|---|---|
| bb. | Medication Management Expansion | License                      | Rx-ADM Browser Interface License  | License fee for the interface from Pharmacy Management Software to Automated Medication Dispensing Machines |
| cc. | Medication Management Expansion | Professional Services        | Implementation: Medication Management - with interface to Automated Dispensing Machines | Project Management and Implementation services for [REDACTED] ES Automated Dispensing Machines.             |
| dd. | Medication Management Expansion | Subscription (non-perpetual) | [REDACTED] ES Automated Dispensing Machines   | Monthly License fee for the use of [REDACTED] ES Automated Dispensing Machines for added patient safety     |
| ee. | Hosting                         | License                      | Plexus Cloud Hosting – [REDACTED] ES ADM  | License fee for [REDACTED] ES Automated Dispensing Machine software to be in a hosted environment           |

**B. CONTRACT PERIOD:**

- B.1. This Contract shall be effective for the period beginning July 1, 2016, and ending on June 30, 2019. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Eight Million Five Hundred Four Thousand Eight Hundred Twenty-Five Dollars and Twenty Eight Cents (\$8,504,825.28) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment rates and the Maximum Liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.



- b. The Contractor shall be compensated for the units, milestones, or increments of service based upon the following payment rates:

Table C.3 - A

| Quarterly Payment Schedule |   |                            |                            |                            |                            |                            |
|----------------------------|---|----------------------------|----------------------------|----------------------------|----------------------------|----------------------------|
| Ref #                      | Description   | 1-Jul-16                   | 1-Jul-17                   | 1-Jul-18                   | 1-Jul-19                   | 1-Jul-20                   |
|                            |   | to                         | to                         | to                         | to                         | to                         |
|                            |   | 30-Jun-17                  | 30-Jun-18                  | 30-Jun-19                  | 30-Jun-20                  | 30-Jun-21                  |
| QM1a                       | Avatar PM; Avatar MPI; Avatar Client Banking  | \$42,868.00                | \$44,583.00                | \$46,366.00                | \$48,221.00                | \$50,150.00                |
| QM1b                       | (CFMS); Avatar CWS; DSS; and RADplus  | \$42,868.00                | \$44,583.00                | \$46,366.00                | \$48,221.00                | \$50,150.00                |
| QM1c                       | Modeling Tool as noted in Sections A.2.a (1) through A.2.a.(5) and Section A.2.a.(7)          | \$42,868.00                | \$44,583.00                | \$46,366.00                | \$48,221.00                | \$50,150.00                |
| QM1d                       |   | \$42,868.00                | \$44,583.00                | \$46,366.00                | \$48,221.00                | \$50,150.00                |
| QM2a                       | DA/SQL as noted in Section A.2.a.(6)  | \$5,080.00                 | \$5,283.00                 | \$5,494.00                 | \$5,714.00                 | \$5,943.00                 |
| QM2b                       |   | \$5,080.00                 | \$5,283.00                 | \$5,494.00                 | \$5,714.00                 | \$5,943.00                 |
| QM2c                       |   | \$5,080.00                 | \$5,283.00                 | \$5,494.00                 | \$5,714.00                 | \$5,943.00                 |
| QM2d                       |   | \$5,080.00                 | \$5,283.00                 | \$5,494.00                 | \$5,714.00                 | \$5,943.00                 |
| QM3a                       | Cache (AVATAR - Production 199  | \$10,215.00                | \$10,725.00                | \$11,154.00                | \$11,600.00                | \$12,064.00                |
| QM3b                       | concurrent users; Test 16 concurrent users;   | \$10,215.00                | \$10,725.00                | \$11,154.00                | \$11,600.00                | \$12,064.00                |
| QM3c                       | Platform-Specific, Single Server) as noted in Section A.2.a.(8)                               | \$10,215.00                | \$10,725.00                | \$11,154.00                | \$11,600.00                | \$12,064.00                |
| QM3d                       |   | \$10,215.00                | \$10,725.00                | \$11,154.00                | \$11,600.00                | \$12,064.00                |
| QM4a                       | Avatar Incident Tracking as noted in Section A.2.a.(9)  | \$897.00                   | \$933.00                   | \$970.00                   | \$1,009.00                 | \$1,050.00                 |
| QM4b                       |   | \$897.00                   | \$933.00                   | \$970.00                   | \$1,009.00                 | \$1,050.00                 |
| QM4c                       |   | \$897.00                   | \$933.00                   | \$970.00                   | \$1,009.00                 | \$1,050.00                 |
| QM4d                       |   | \$897.00                   | \$933.00                   | \$970.00                   | \$1,009.00                 | \$1,050.00                 |
| QM5a                       | HL7 interface from AVATAR to the Pharmacy / CPOE / eMAR System as noted in Section A.2.a.(10) | \$4,984.00                 | \$5,183.00                 | \$5,390.00                 | \$5,606.00                 | \$5,830.00                 |
| QM5b                       |   | \$4,984.00                 | \$5,183.00                 | \$5,390.00                 | \$5,606.00                 | \$5,830.00                 |
| QM5c                       |   | \$4,984.00                 | \$5,183.00                 | \$5,390.00                 | \$5,606.00                 | \$5,830.00                 |
| QM5d                       |   | \$4,984.00                 | \$5,183.00                 | \$5,390.00                 | \$5,606.00                 | \$5,830.00                 |
| QM6a                       | ICD-10 / DSM-5 Diagnosis Content Subscription as noted in Section A.2.a.(11)                  | \$1,507.00                 | \$1,582.00                 | \$1,645.00                 | \$1,711.00                 | \$1,780.00                 |
| QM6b                       |   | \$1,507.00                 | \$1,582.00                 | \$1,645.00                 | \$1,711.00                 | \$1,780.00                 |
| QM6c                       |   | \$1,507.00                 | \$1,582.00                 | \$1,645.00                 | \$1,711.00                 | \$1,780.00                 |
| QM6d                       |   | \$1,507.00                 | \$1,582.00                 | \$1,645.00                 | \$1,711.00                 | \$1,780.00                 |
| QM7a                       | Escrow Account Service as described in Section A.9.   | \$322.00                   | \$335.00                   | \$348.00                   | \$362.00                   | \$377.00                   |
| QM7b                       |   | \$322.00                   | \$335.00                   | \$348.00                   | \$362.00                   | \$377.00                   |
| QM7c                       |   | \$322.00                   | \$335.00                   | \$348.00                   | \$362.00                   | \$377.00                   |
| QM7d                       |   | \$322.00                   | \$335.00                   | \$348.00                   | \$362.00                   | \$377.00                   |
| CO1                        | Professional Services - Authorized using Change Orders per Section A.2.b                      | \$225 per hour x 515 hours | \$225 per hour x 537 hours | \$225 per hour x 558 hours | \$225 per hour x 580 hours | \$225 per hour x 603 hours |
|                            |   | \$115,875.00               | \$120,825.00               | \$125,550.00               | \$130,500.00               | \$135,675.00               |
| Total Annual Amount        |   | \$379,367.00               | \$395,321.00               | \$411,018.00               | \$427,392.00               | \$444,451.00               |



c. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following maximum payment rates under the appropriate Change Order

### Products and Services Contract Rates

Table C.3 – B

| Ref # | Unit     | Service Description   | Amount       |
|-------|----------|---|--------------|
| OT1   | One-Time | Avatar RADplus Named User: 1218 - 1400<br>Named User Expansion as noted in<br>Section A.18.a  | \$145,600.00 |
| OT2   | One-Time | POS and Batch Scanning Powered by<br>Perceptive as noted in section A.18.b  | \$70,000.00  |
| OT3   | One-Time | Avatar Electronic Signature License as<br>noted in section A.18.c   | \$40,000.00  |
| OT4   | One-Time | Avatar Addiction Severity Index (ASI) as<br>noted in section A.18.d   | \$7,500.00   |
| OT5   | One-Time | Implementation: Clinical Workstation<br>(CWS), Electronic Signature, Addiction<br>Severity Index, POS/Batch Scanning,<br>Hosting Set-Up, Hosting Cutover. As noted<br>in section A.18.e | \$907,400.00 |
| OT6   | One-Time | Hosting Set-Up and Hosting Cutover as<br>noted in section A.18.y and A.18.z   | \$61,200.00  |
| OT7   | One-Time | Rx-RxConnect Browser License Fee 0 -<br>100 Beds Memphis Site as noted in<br>section A.18.f   | \$33,750.00  |
| OT8   | One-Time | Rx-RxConnect Browser License Fee 101 -<br>200 Beds: Moccasin, Middle, Western Sites<br>as noted in section A.18.h   | \$126,000.00 |
| OT9   | One-Time | Rx-ADM Browser Interface License: All four<br>locations as noted in section A.18.bb   | \$10,000.00  |
| OT10  | One-Time | RxScan 2D USB as noted in section<br>A.18.m   | \$199.00     |
| OT11  | One-Time | Crystal Reports Developer's Version<br>License as noted in section A.18.i   | \$495.00     |
| OT12  | One-Time | Avatar Order Entry as noted in section<br>A.18.j  | \$35,000.00  |
| OT13  | One-Time | Avatar eMAR as noted in section A.18.k  | \$35,000.00  |
| OT14  | One-Time | Implementation: Closed Loop Medication<br>Management - with interface to Automated<br>Dispensing Machines as noted in section<br>A.18.l and A.18.B.cc                                   | \$468,236.00 |



|      |          |  |              |
|------|----------|--|--------------|
| OT15 | One-Time | Implementation: All Interoperability and Reporting Tool Implementations as noted in section A.18.p | \$210,000.00 |
| OT16 | One-Time | Implementation: Wiley Libraries as noted in section A.18.f   | \$800.00     |
| OT17 | One-Time | Implementation: myLearningPointe as noted in section A.18.g-1                                      | \$1,000.00   |

Table C.3 – C

| Ref # | Service Description  | Amount                           |                                  |                                  |                                  |                                  |
|-------|--|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
|       |  | Year 1<br>(7/1/2016 - 6/30/2017) | Year 2<br>(7/1/2017 - 6/30/2018) | Year 3<br>(7/1/2018 - 6/30/2019) | Year 4<br>(7/1/2019 - 6/30/2020) | Year 5<br>(7/1/2020 - 6/30/2021) |
| QM8a  | Plexus Cloud Hosting - Avatar as noted in section A.18.v   | \$144,000.00                     | \$144,000.00                     | \$144,000.00                     | \$144,000.00                     | \$144,000.00                     |
| QM8b  |  | \$144,000.00                     | \$144,000.00                     | \$144,000.00                     | \$144,000.00                     | \$144,000.00                     |
| QM8c  |  | \$144,000.00                     | \$144,000.00                     | \$144,000.00                     | \$144,000.00                     | \$144,000.00                     |
| QM8d  |  | \$144,000.00                     | \$144,000.00                     | \$144,000.00                     | \$144,000.00                     | \$144,000.00                     |
| QM9a  | Plexus Cloud Hosting - Avatar Data Warehouse as noted in section A.18.w                            | \$2,400.00                       | \$2,400.00                       | \$2,400.00                       | \$2,400.00                       | \$2,400.00                       |
| QM9b  |  | \$2,400.00                       | \$2,400.00                       | \$2,400.00                       | \$2,400.00                       | \$2,400.00                       |
| QM9c  |  | \$2,400.00                       | \$2,400.00                       | \$2,400.00                       | \$2,400.00                       | \$2,400.00                       |
| QM9d  |  | \$2,400.00                       | \$2,400.00                       | \$2,400.00                       | \$2,400.00                       | \$2,400.00                       |
| QM10a | Plexus Cloud Hosting - Perceptive as noted in section A.18.x                                       | \$17,136.00                      | \$17,136.00                      | \$17,136.00                      | \$17,136.00                      | \$17,136.00                      |
| QM10b |  | \$17,136.00                      | \$17,136.00                      | \$17,136.00                      | \$17,136.00                      | \$17,136.00                      |
| QM10c |  | \$17,136.00                      | \$17,136.00                      | \$17,136.00                      | \$17,136.00                      | \$17,136.00                      |
| QM10d |  | \$17,136.00                      | \$17,136.00                      | \$17,136.00                      | \$17,136.00                      | \$17,136.00                      |
| QM11a | Plexus Cloud Hosting - RxConnect (10 Users) as noted in section A.18.y                             | \$2,700.00                       | \$2,700.00                       | \$2,700.00                       | \$2,700.00                       | \$2,700.00                       |
| QM11b |  | \$2,700.00                       | \$2,700.00                       | \$2,700.00                       | \$2,700.00                       | \$2,700.00                       |
| QM11c |  | \$2,700.00                       | \$2,700.00                       | \$2,700.00                       | \$2,700.00                       | \$2,700.00                       |
| QM11d |  | \$2,700.00                       | \$2,700.00                       | \$2,700.00                       | \$2,700.00                       | \$2,700.00                       |
| QM12a | Plexus Cloud Hosting – [REDACTED] ES ADM as noted in section A.18.ee                               | \$13,200                         | \$13,200                         | \$13,200                         | \$13,200                         | \$13,200                         |
| QM12b |  | \$13,200                         | \$13,200                         | \$13,200                         | \$13,200                         | \$13,200                         |
| QM12c |  | \$13,200                         | \$13,200                         | \$13,200                         | \$13,200                         | \$13,200                         |
| QM12d |  | \$13,200                         | \$13,200                         | \$13,200                         | \$13,200                         | \$13,200                         |
| QM13a | Avatar RADplus Named User Maintenance: 1218 - 1400 Named User Expansion as noted in section A.18.a | \$7,644.00                       | \$8,026.20                       | \$8,427.51                       | \$8,848.89                       | \$9,291.33                       |
| QM13b |  | \$7,644.00                       | \$8,026.20                       | \$8,427.51                       | \$8,848.89                       | \$9,291.33                       |
| QM13c |  | \$7,644.00                       | \$8,026.20                       | \$8,427.51                       | \$8,848.89                       | \$9,291.33                       |
| QM13d |  | \$7,644.00                       | \$8,026.20                       | \$8,427.51                       | \$8,848.89                       | \$9,291.33                       |



|       |  |             |             |             |             |             |
|-------|--|-------------|-------------|-------------|-------------|-------------|
| QM14a | Avatar RADplus   | \$26,460.00 | \$27,783.00 | \$29,172.15 | \$30,630.76 | \$32,162.30 |
| QM14b | Named User   | \$26,460.00 | \$27,783.00 | \$29,172.15 | \$30,630.76 | \$32,162.30 |
| QM14c | Maintenance - 24x7   | \$26,460.00 | \$27,783.00 | \$29,172.15 | \$30,630.76 | \$32,162.30 |
| QM14d | Premium: 00 - 1400 Named User Expansion as noted in section A.18.a | \$26,460.00 | \$27,783.00 | \$29,172.15 | \$30,630.76 | \$32,162.30 |
| QM15a | POS and  | \$3,675.00  | \$3,858.75  | \$4,051.69  | \$4,254.27  | \$4,466.99  |
| QM15b | Batch  | \$3,675.00  | \$3,858.75  | \$4,051.69  | \$4,254.27  | \$4,466.99  |
| QM15c | Scanning   | \$3,675.00  | \$3,858.75  | \$4,051.69  | \$4,254.27  | \$4,466.99  |
| QM15d | Powered by Perceptive Maintenance as noted in section A.18.b       | \$3,675.00  | \$3,858.75  | \$4,051.69  | \$4,254.27  | \$4,466.99  |
| QM16a | Avatar   | \$2,025.00  | \$2,126.25  | \$2,232.56  | \$2,344.19  | \$2,461.40  |
| QM16b | Electronic   | \$2,025.00  | \$2,126.25  | \$2,232.56  | \$2,344.19  | \$2,461.40  |
| QM16c | Signature  | \$2,025.00  | \$2,126.25  | \$2,232.56  | \$2,344.19  | \$2,461.40  |
| QM16d | Maintenance as noted in section A.18.c                             | \$2,025.00  | \$2,126.25  | \$2,232.56  | \$2,344.19  | \$2,461.40  |
| QM17a | Avatar ASI   | \$394.00    | \$413.70    | \$434.39    | \$456.10    | \$478.91    |
| QM17b | Maintenance  | \$394.00    | \$413.70    | \$434.39    | \$456.10    | \$478.91    |
| QM17c | as noted in  | \$394.00    | \$413.70    | \$434.39    | \$456.10    | \$478.91    |
| QM17d | section A.18.d   | \$394.00    | \$413.70    | \$434.39    | \$456.10    | \$478.91    |
| QM18a | Rx-RxConnect   | \$2,531.00  | \$2,657.55  | \$2,790.43  | \$2,929.95  | \$3,076.45  |
| QM18b | Browser  | \$2,531.00  | \$2,657.55  | \$2,790.43  | \$2,929.95  | \$3,076.45  |
| QM18c | Maintenance  | \$2,531.00  | \$2,657.55  | \$2,790.43  | \$2,929.95  | \$3,076.45  |
| QM18d | Fee 0 - 100 Beds as noted in section A.18.h                        | \$2,531.00  | \$2,657.55  | \$2,790.43  | \$2,929.95  | \$3,076.45  |
| QM19a | Rx-RxConnect   | \$9,450.00  | \$9,922.50  | \$10,418.63 | \$10,939.56 | \$11,486.53 |
| QM19b | Browser  | \$9,450.00  | \$9,922.50  | \$10,418.63 | \$10,939.56 | \$11,486.53 |
| QM19c | Maintenance  | \$9,450.00  | \$9,922.50  | \$10,418.63 | \$10,939.56 | \$11,486.53 |
| QM19d | Fee 101 - 200 Beds as noted in section A.18.h                      | \$9,450.00  | \$9,922.50  | \$10,418.63 | \$10,939.56 | \$11,486.53 |
| QM20a | Rx-ADM   | \$650.00    | \$682.50    | \$716.63    | \$752.46    | \$790.08    |
| QM20b | Maintenance  | \$650.00    | \$682.50    | \$716.63    | \$752.46    | \$790.08    |
| QM20c | Fee 0-200 beds: All four   | \$650.00    | \$682.50    | \$716.63    | \$752.46    | \$790.08    |
| QM20d | locations as noted in section A.18.bb                              | \$650.00    | \$682.50    | \$716.63    | \$752.46    | \$790.08    |
| QM21a | RxScan NDC   | \$299.25    | \$314.21    | \$329.92    | \$346.42    | \$363.74    |



|       |   |            |            |            |            |            |
|-------|---|------------|------------|------------|------------|------------|
| QM21b | Translator as noted in section A.18.n   | \$299.25   | \$314.21   | \$329.92   | \$346.42   | \$363.74   |
| QM21c |   | \$299.25   | \$314.21   | \$329.92   | \$346.42   | \$363.74   |
| QM21d |   | \$299.25   | \$314.21   | \$329.92   | \$346.42   | \$363.74   |
| QM22a | Ultimedex Suite Subscription as noted in section A.18.o   | \$5,400.00 | \$5,670.00 | \$5,953.50 | \$6,251.18 | \$6,563.73 |
| QM22b |   | \$5,400.00 | \$5,670.00 | \$5,953.50 | \$6,251.18 | \$6,563.73 |
| QM22c |   | \$5,400.00 | \$5,670.00 | \$5,953.50 | \$6,251.18 | \$6,563.73 |
| QM22d |   | \$5,400.00 | \$5,670.00 | \$5,953.50 | \$6,251.18 | \$6,563.73 |
| QM23a | Crystal Reports Developer's Version Maintenance as noted in section A.18.i  | \$25.00    | \$26.25    | \$27.56    | \$28.94    | \$30.39    |
| QM23b |   | \$25.00    | \$26.25    | \$27.56    | \$28.94    | \$30.39    |
| QM23c |   | \$25.00    | \$26.25    | \$27.56    | \$28.94    | \$30.39    |
| QM23d |   | \$25.00    | \$26.25    | \$27.56    | \$28.94    | \$30.39    |
| QM24a | Avatar Order Entry Maintenance as noted in section A.18.j   | \$1,837.50 | \$1,929.38 | \$2,025.84 | \$2,127.14 | \$2,233.49 |
| QM24b |   | \$1,837.50 | \$1,929.38 | \$2,025.84 | \$2,127.14 | \$2,233.49 |
| QM24c |   | \$1,837.50 | \$1,929.38 | \$2,025.84 | \$2,127.14 | \$2,233.49 |
| QM24d |   | \$1,837.50 | \$1,929.38 | \$2,025.84 | \$2,127.14 | \$2,233.49 |
| QM25a | Avatar eMAR Maintenance as noted in section A.18.k  | \$1,837.50 | \$1,929.38 | \$2,025.84 | \$2,127.14 | \$2,233.49 |
| QM25b |   | \$1,837.50 | \$1,929.38 | \$2,025.84 | \$2,127.14 | \$2,233.49 |
| QM25c |   | \$1,837.50 | \$1,929.38 | \$2,025.84 | \$2,127.14 | \$2,233.49 |
| QM25d |   | \$1,837.50 | \$1,929.38 | \$2,025.84 | \$2,127.14 | \$2,233.49 |
| QM26a | CareConnect Base as noted in section A.18.q   | \$6,900.00 | \$7,245.00 | \$7,607.25 | \$7,987.61 | \$8,386.99 |
| QM26b |   | \$6,900.00 | \$7,245.00 | \$7,607.25 | \$7,987.61 | \$8,386.99 |
| QM26c |   | \$6,900.00 | \$7,245.00 | \$7,607.25 | \$7,987.61 | \$8,386.99 |
| QM26d |   | \$6,900.00 | \$7,245.00 | \$7,607.25 | \$7,987.61 | \$8,386.99 |
| QM27a | CareConnect Referral Connector as noted in section A.18.r   | \$2,400.00 | \$2,520.00 | \$2,646.00 | \$2,778.30 | \$2,917.22 |
| QM27b |   | \$2,400.00 | \$2,520.00 | \$2,646.00 | \$2,778.30 | \$2,917.22 |
| QM27c |   | \$2,400.00 | \$2,520.00 | \$2,646.00 | \$2,778.30 | \$2,917.22 |
| QM27d |   | \$2,400.00 | \$2,520.00 | \$2,646.00 | \$2,778.30 | \$2,917.22 |
| QM28a | CareConnect Lab Orders (Outbound) Out of network or state labs may require aggregator fees as noted in section A.18.s | \$2,400.00 | \$2,520.00 | \$2,646.00 | \$2,778.30 | \$2,917.22 |
| QM28b |   | \$2,400.00 | \$2,520.00 | \$2,646.00 | \$2,778.30 | \$2,917.22 |
| QM28c |   | \$2,400.00 | \$2,520.00 | \$2,646.00 | \$2,778.30 | \$2,917.22 |
| QM28d |   | \$2,400.00 | \$2,520.00 | \$2,646.00 | \$2,778.30 | \$2,917.22 |
| QM29a | CareConnect Lab Results (Inbound) Out of network or state labs may require aggregator fees. as noted in section       | \$2,400.00 | \$2,520.00 | \$2,646.00 | \$2,778.30 | \$2,917.22 |
| QM29b |   | \$2,400.00 | \$2,520.00 | \$2,646.00 | \$2,778.30 | \$2,917.22 |
| QM29c |   | \$2,400.00 | \$2,520.00 | \$2,646.00 | \$2,778.30 | \$2,917.22 |
| QM29d |   | \$2,400.00 | \$2,520.00 | \$2,646.00 | \$2,778.30 | \$2,917.22 |



|       | A.18.t  |            |            |            |            |            |
|-------|---|------------|------------|------------|------------|------------|
| QM30a | Direct  | \$240.00   | \$252.00   | \$264.60   | \$277.83   | \$291.72   |
| QM30b | Message                                       | \$240.00   | \$252.00   | \$264.60   | \$277.83   | \$291.72   |
| QM30c | Mailbox-                                      | \$240.00   | \$252.00   | \$264.60   | \$277.83   | \$291.72   |
| QM30d | CareConnect<br>as noted in<br>section A.18.u  | \$240.00   | \$252.00   | \$264.60   | \$277.83   | \$291.72   |
| QM31a | Wiley Content                                 | \$1,980.00 | \$1,980.00 | \$1,980.00 | \$1,980.00 | \$1,980.00 |
| QM31b | Libraries                                     | \$1,980.00 | \$1,980.00 | \$1,980.00 | \$1,980.00 | \$1,980.00 |
| QM31c | Subscription                                  | \$1,980.00 | \$1,980.00 | \$1,980.00 | \$1,980.00 | \$1,980.00 |
| QM31d | as noted in<br>section A.18.f                 | \$1,980.00 | \$1,980.00 | \$1,980.00 | \$1,980.00 | \$1,980.00 |
| QM32a | myLearningpoi                                 | \$7,500.00 | \$7,500.00 | \$7,500.00 | \$7,500.00 | \$7,500.00 |
| QM32b | nte   | \$7,500.00 | \$7,500.00 | \$7,500.00 | \$7,500.00 | \$7,500.00 |
| QM32c | Subscription &<br>Training as a<br>service    | \$7,500.00 | \$7,500.00 | \$7,500.00 | \$7,500.00 | \$7,500.00 |
| QM32d | Subscription<br>as noted in<br>section A.18.g | \$7,500.00 | \$7,500.00 | \$7,500.00 | \$7,500.00 | \$7,500.00 |

Table C.3 - D

| Ref # | Service Description | Amount                               |                                     |                                     |                                     |                                  |
|-------|---------------------|--------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|----------------------------------|
|       |                     | Year 1<br>(10/1/2016 -<br>6/30/2017) | Year 2<br>(7/1/2017 -<br>6/30/2018) | Year 3<br>(7/1/2018 -<br>6/30/2019) | Year 4<br>(7/1/2019 -<br>6/30/2020) | Year 5 (7/1/2020 -<br>6/30/2021) |
| QM33a | ES Automated        | \$0.00                               | \$123,056.07                        | \$123,056.07                        | \$23,549.40                         | \$23,549.40                      |
| QM33b | Dispensing Machines | \$123,056.07                         | \$123,056.07                        | \$123,056.07                        | \$23,549.40                         | \$23,549.40                      |
| QM33c | as noted in section | \$123,056.07                         | \$123,056.07                        | \$123,056.07                        | \$23,549.40                         | \$23,549.40                      |
| QM33d | A.21.dd             | \$123,056.07                         | \$123,056.07                        | \$123,056.10                        | \$23,549.40                         | \$23,549.40                      |

- c. QM = Quarterly Maintenance; all quarterly maintenance fees shall be paid in arrears.
- d. In the event the State fails to pay for service within sixty (60) days from date of receipt of each accurate invoice properly submitted, except for amounts disputed by the State in good faith, the Contractor may refuse to provide service until the State pays the amount due when service was discontinued; quarterly maintenance fees that would have been paid had service not been discontinued to bring the system current; and any current amount due pursuant to this Contract.
- e. For products and services contained in this contract, payments will be made in accordance with an agreed upon payment schedule that will be detailed in change order which will include a payment schedule based on the above maximum fees.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in the contract or Change Order and present said invoices



no more often than quarterly, with all necessary supporting documentation, to:

Tennessee Department of Mental Health and Substance Abuse Services  
ATTN: Fiscal Services  
Andrew Jackson Building, 6th Floor  
500 Deaderick Street  
Nashville, TN 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor);
  - (2) Invoice Date;
  - (3) Contract Number (assigned by the State);
  - (4) Customer Account Name: Department of Mental Health and Substance Abuse Services, Division of Administrative Services, Office of Information Technology;
  - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer);
  - (6) Contractor Name;
  - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract;
  - (8) Contractor Contact for Invoice Questions (name, phone, e-mail, and/or fax);
  - (9) Contractor Remittance Address;
  - (10) Description of Delivered Service; and
  - (11) Complete Itemization of Charges, which shall detail the following:
    - i. Service or Milestone Description (including name & title as applicable) of each service invoiced;
    - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
    - iii. Applicable Payment Rate (as stipulated in the Contract or applicable Change Order) of each service invoiced;
    - iv. Amount Due by Service; and
    - v. Total Amount Due for the invoice period.
- b. The Contractor understands and agrees that an invoice under this Contract shall:
- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
  - (2) only be submitted for completed service and shall not include any charge for future work;
  - (3) not include sales tax or shipping charges; and
  - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of



Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

**D. MANDATORY TERMS AND CONDITIONS:**

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Richard Zhu, Director, Office of Information Technology  
Division of Administrative Services  
Tennessee Department of Mental Health and Substance Abuse Services  
Andrew Jackson Building, 6th Floor  
500 Deaderick Street  
Nashville, TN 37243  
E-mail: Richard.Zhu@tn.gov  
Phone: (615) 532-8636

Cynthia Tyler, Assistant Commissioner  
Division of Administrative and Regulatory Services  
Tennessee Department of Mental Health and Substance Abuse Services  
Andrew Jackson Building, 6th Floor  
500 Deaderick Street  
Nashville, TN 37243  
E-mail: Cynthia.tyler@tn.gov  
Phone: (615) 532-0410

The Contractor:

Timothy Donovan, Vice President and General Counsel  
NetSMART Technologies, Inc.



3500 Sunrise Highway, Suite D122  
Great River, NY 11739  
E-mail: tdonovan@ntst.com  
Phone: (631) 969-7322

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if



the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.



- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.



- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
  - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;



- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.



D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
- b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment 3 – Third Party Supplement, Attachment 1 – Attestation Re: Personnel Used in Contract Performance, Attachment 2 – Letter of Diversity Commitment,
- c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
- e. any technical specifications provided to proposers during the procurement process to award this Contract; and
- f. the Contractor's response seeking this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

E.2. Third Party Licensing. Contractor is an authorized reseller for certain software and hardware products that will be provided to the State under this Contract. Contractor has included in a supplement ("Supplement") to this Contract, attached as Attachment 3 to this Contract and made a part of this Contract by reference, terms that are specific to the software and hardware referenced in the Supplement. The terms and conditions contained in the Supplement do not supersede any of the terms of this Contract as between Netsmart and the State.

E.3. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.

E.4. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

E.5. Intellectual Property. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.



IN WITNESS WHEREOF,

NETSMART TECHNOLOGIES, INC.:

  
Joseph McGovern  
Executive Vice President  
NetSmart Technologies, Inc.

June 29, 2016

CONTRACTOR SIGNATURE

DATE

Joseph McGovern, EVP

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES:

  
E. Douglas Varney

Jun 29, 2016

E. DOUGLAS VARNEY, COMMISSIONER

DATE




**ATTACHMENT 1**

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

|   |                             |
|---|-----------------------------|
| <b>SUBJECT CONTRACT NUMBER (Edison Record ID):</b>  |                             |
| <b>CONTRACTOR LEGAL ENTITY NAME:</b>  | Netsmart Technologies, Inc. |
| <b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b><br>(or Social Security Number or <u>Edison Vendor ID</u> ) | 6819                        |

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

  
Joseph McGovern  
Executive Vice President  
Netsmart Technologies, Inc.

**CONTRACTOR SIGNATURE**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Joseph McGovern , EVP

**PRINTED NAME AND TITLE OF SIGNATORY**

Certificate of Authority - signed June 24, 2016 by Tom Herzog, Secretary, Netsmart Technologies, Inc.

**DATE OF ATTESTATION**



**ATTACHMENT 2**

**SAMPLE LETTER OF DIVERSITY COMMITMENT**

Netsmart Technologies, Inc.  
4950 College Boulevard  
Overland Park, KS 66211

(Salutation),

Netsmart Technologies, Inc. is committed to achieving or surpassing a goal of (numeral) percent spend with certified diversity business enterprise firms on State of Tennessee contract # (Edison document #). Diversity businesses are defined as those that are owned by minority, women, small business and Tennessee service-disabled veterans which are certified by the Governor's Office of Diversity Business Enterprise (Go-DBE).

We confirm our commitment of (percentage) participation on the (Contract) by using the following diversity businesses:

Name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veteran) of anticipated diversity subcontractors and suppliers:

\_\_\_\_\_

(ii) Participation estimates (expressed as a percent of the total contract value to be dedicated to diversity subcontractors and suppliers):  
\_\_\_\_\_ %.

(iii) Description of anticipated services to be performed by diversity subcontractors and suppliers:

\_\_\_\_\_

\_\_\_\_\_

We accept that our commitment to diversity advances the State's efforts to expand opportunity of diversity businesses to do business with the State as contractors and sub-contractors.

Further, we commit to:

Using applicable reporting tools that allow the State to track and report purchases from businesses owned by minority, women, Tennessee service-disabled veterans and small business.

Reporting quarterly to the Go-DBE office the dollars spent with certified diversity businesses owned by minority, women, Tennessee service-disabled veterans and small business accomplished under contract # (Edison number).

Netsmart Technologies, Inc. is committed to working with the Go-DBE office to accomplish this goal.

Regards,

(Company authority – signature and title)



### ATTACHMENT 3

#### THIRD PARTY SUPPLEMENT

These terms and conditions ("Supplement") supplement the terms of the Contract (referred to in this supplement as the "Agreement") between the State of Tennessee, Department of Mental Health and Substance Abuse Services ("State of Tennessee," "Client," or the "State") and Netsmart Technologies, Inc ("Netsmart") and apply only to the products referenced in this Supplement that are distributed, licensed and support by CareFusion Solutions LLC, Lexmark LLC, and Inpriva, Inc. respectively (the "Third Party Licensors"). This Supplement does not limit the obligations or liability of Netsmart as agreed upon between Netsmart and the State of Tennessee in the Agreement. Although CareFusion the Third Party Licensors are not parties to the Agreement, Netsmart and the State agree that the Third Party Licensors CareFusion are third party beneficiaries of the terms of this Supplement. To the extent there are obligations on Netsmart or the State to each other under this Supplement, such terms and conditions are included by reference in the Agreement. As between Netsmart and the State, In the event of any conflict between the terms and conditions of the Agreement and those contained in this Supplement, the terms and conditions of the Agreement shall prevail.

#### **CareFusion Products**

1. Netsmart and CareFusion Solutions, LLC ("CareFusion") are parties to a Reseller Agreement Dated October 7, 2014 authorizing Netsmart to distribute CareFusion software and automated dispensing system hardware end users that have purchased and installed the Netsmart software, for use with such Netsmart software
2. Users of the CF Products should consult a variety of information sources before making any treatment decision. Users should check the product information sheet accompanying each drug or medication to verify conditions of use, and should identify any changes in dosage schedule or contraindications. Information in the Care Fusion databases is not a substitute for individual patient assessment based upon individual examination of each patient and consideration of laboratory data and other factors unique to the patient. Each user bears full responsibility for the appropriate use of the information.
3. Acceptance. The CF Software (defined below) and the automated dispensing system hardware (CF Hardware) (collectively, "CF Product") will be deemed accepted by the State upon delivery or upon completion of the applicable Netsmart implementation services of the CF Product, provided that such CF Product functions in accordance with the specifications of its User Guide (defined below) ("Acceptance" or "Accepted"). Client may reject a CF Product only if the Product fails to function in accordance with the specifications of its User Guide. Upon completion of applicable services, Netsmart will request that Client execute Netsmart's standard confirmation form. Client understands that the Products are provided on an "as available" basis only and Netsmart does not guarantee availability of the Products at any time prior to the acceptance of the applicable order for the Products. The State shall have no payment obligations regarding the CF Products prior to Acceptance of the relevant CF Product except as otherwise provided in the Agreement between Netsmart and the State.



4. **Warranty.** Netsmart and the State agree that CareFusion makes no warranty of any kind, express or implied, to the State, provided, however, that Netsmart is authorized to provide a warranty for the CF Product to the State, in its own name, under the Agreement between the State and Netsmart. CareFusion has provided a warranty to Netsmart under an agreement between Netsmart and CareFusion (the "Reseller Agreement") and CareFusion and Netsmart have also agreed upon terms for Netsmart to receive product support under the Reseller Agreement. Netsmart will present warranty claims submitted by the State under its warranty with CareFusion..
5. **Software, Data, and Intellectual Property Ownership.**
  - a. **Software** "CF Software" means all Software distributed by CareFusion for the use of the CF Product whether owned, or licensed by CareFusion (e.g., application software, embedded and/or integrated software, interface software, custom drivers including additional software elements integrated into the [REDACTED] Product Leximcomp) The CF Software is licensed, not sold. CareFusion and its licensors retain all ownership rights in CF Software.
  - b. **Software License.** Subject to these terms and conditions and applicable User Guide and the license restriction set forth in Subsection c below, NetSmart is authorized by CareFusion to grant to the State a perpetual (unless sold on a subscription-only basis), non-exclusive, non-transferable license to use CF Software solely in connection with the CF Products at the State's site(s). The perpetual license granted herein does not include a license to use CF Software for development, testing or support purposes.
  - c. All title and intellectual property rights in and to CF Software (including, but not limited to, code sequence, logic, structure and screens) and documentation, and in and to any improvements, enhancements, updates, or upgrades thereto, including concepts and technology inherent in CF Software, are and at all times shall remain, the sole and exclusive property of CareFusion or its licensors. CF Software is protected by copyright laws as well as other intellectual property laws and treaties. Client's possession, use, or access to CF Software does not transfer any ownership of CF Software nor any intellectual property rights to Client. All rights not expressly granted under this Supplement are reserved by CareFusion and its licensors. Nothing contained in this Supplement shall be construed directly or indirectly to assign or grant to Client any right, title or interest in or to trademarks, service marks, copyrights, patents, or trade secrets of CareFusion or its licensors.
  - d. **Copies.** Client may not make any copies of CF Software for any purpose unless for back-up purposes expressly authorized by Netsmart.
  - e. **Restrictions.** Except as permitted by applicable law, Client shall not:
    - i. work around any technical limitations in CF Software;
    - ii. reverse engineer, de-compile, translate, disassemble or otherwise attempt to derive source code from the CF Software, in whole or in part ( or in any instance where the law permits any such action, Client shall provide NetSmart at least ninety (90) days advance written notice of its belief that such action is Warranted and permitted, and shall provide NetSmart (in conjunction with Third Party) with an opportunity to evaluate if the Jaw's requirements necessitate such action);
    - iii. allow access or permit use of the CF Software by any user other than that



- permitted by Netsmart in Client's license agreement with Netsmart;
  - iv. modify or create derivative works based upon CF Software;
  - v. publish CF Software, or post any portion of it on public bulletin boards, websites, Internet domains, or online chat rooms;
  - vi. sell, rent, lease, lend, license, sublicense or otherwise transfer, in whole or in part, CF Software or related documentation to any third party;
  - vii. use CF Software in connection with, through or to an application service provider other than Netsmart, or using other similar network hosting methods;
  - viii. alter, remove or destroy any copyright notice, trade secret or other proprietary rights notice from the CF Software
  - ix. separate integrated CF Software from any CF Product, or otherwise use integrated CF Software except as as an integrated part of the applicable CF Product.
- f. If the State terminates its hosting agreement with Netsmart but continues to license and use the CF Software, the State will enter into a new or amended agreement with additional terms necessary for a self hosted installation of the CF Software.
- g. CF Software is licensed as one non-transferrable and non-assignable license per "Main Unit" except in the event of an assignment authorized in writing by NetSmart or due to a change of control of ownership on the part of the State. A Main Unit is defined as an end-user work station that facilitates interaction with the device operating software for the [REDACTED] Products. Without limiting these license restrictions, Client will adopt and implement reasonable measures to guard against unauthorized use of CF Software. NetSmart is required by CareFusion to obtain information from Client that is reasonably necessary to verify the number of individuals who are using the CF Software and the number of licenses held by Client. Information requests will be made no more than once each year, with sufficient time for the State to assemble the information and without interference with the State's operations or use of the CF Products. Client will use good faith efforts to provide NetSmart with thirty (30) days prior notice for any event that will increase the number of licenses needed by Client (, such as acquisition of a hospital or construction of a new facility) and the license count will be adjusted accordingly. Client will not resell the CF Products.
6. **Information Management Tools.** The State acknowledges and agrees that the CF Software furnished by Netsmart is an information management tool only and that it contemplates and requires the involvement of The State's learned intermediaries. The State further acknowledges and agrees that neither NetSmart nor its suppliers have represented its products as having the ability to diagnose disease, prescribe treatment, or perform any other tasks that constitute the practice of medicine or of other professional or academic disciplines.
7. **Internet-Based Services.** CF Software may contain components that enable and facilitate the use of certain Internet- based services. Client acknowledges and agrees that if used by Client, the service provider may automatically check the version of CF Software and/or its components that Client is using and may provide upgrades or supplements to CF Software which may be automatically downloaded. No personally-identifiable information, will be obtained through these



services.

8. Export Restrictions. CF Software may be subject to United States export laws and regulations. Client must comply with all applicable domestic and international export laws and regulations, including (without limitation) restrictions on destinations, the States and end use.
9. Limited Right to Print Articles. Client may print out individual articles containing only insubstantial portions of the Lexi-Comp Licensed Databases ("Databases") for Client's personal educational use as long as Client includes a source reference to Lexi-Comp and its copyright notice.
10. Updates. If Client has purchased a [REDACTED] system, NetSmart shall provide quarterly updates to the Databases at no additional cost.

#### **Perceptive Document Capture/Imagenow Product Suite - Supplemental License Terms**

1. Lexmark Enterprise Software, LLC (formerly Perceptive Software, LLC) ("Lexmark") and Netsmart Technologies, Inc. are parties to a Value Added Reseller Agreement dated August 17, 2012 authorizing Netsmart to resell perpetual licenses and subscription licenses and support and maintenance and professional services to end users that have purchased and installed the Netsmart software, for use with such Netsmart software
2. License Grant. The terms of the license that has been sold by Netsmart to you are as follows The State will hold a perpetual, nonexclusive and nontransferable license to use the Lexmark computer programs provided to State by Netsmart as a reseller for Lexmark with this Lexmark License in the original, unmodified, machine-readable, object code form only, as delivered by Lexmark through Netsmart, including, without limitation, any data structures created by such programs and all upgrades, enhancements, updates and new version releases of any of the foregoing that may be provided by Lexmark user of the Lexmark software from time to time (collectively referred to as the "Lexmark Software"), and the accompanying User Documentation (the "User Documentation"), only as authorized in this Lexmark License and for the purposes contemplated by the User Documentation.
3. License Rights.
  - a. Per-seat Client Licensing. If State licenses client seat licenses of the Lexmark Software, the client component of the Lexmark Software may be used only on computers that State owns, leases or otherwise controls (or in the event of the inoperability of a computer, on your backup computer only until such operability is restored) equal to the number of client seat licenses of the Lexmark Software that State has purchased. In addition, the licensed client component of the Lexmark Software may be used only with the licensed server component of the Lexmark Software. State may not use the Lexmark Software on any additional computers, on two or more computers, or in a local area network (LAN) or other network, either in a multi-launch or remote sharing environment, without purchasing additional license rights.
  - b. Concurrent Client Licensing. If State licenses concurrent licenses of the Lexmark Software, State may install the client component of the Lexmark Software on any computers State owns, leases or otherwise controls (or in the event of the inoperability of a computer, on a State backup computer only until such operability is restored). However, the number of concurrent licenses of the Lexmark Software that State operates at any time with the licensed server component of the Lexmark Software shall not exceed the number of client seat licenses that State has purchased.
  - c. Server Licensing. Use of the server component of the Lexmark Software, including all data structures, data elements, and other data types, is restricted to a single computer that State



- owns, leases, or otherwise controls (or in the event of the inoperability of a computer, on a State backup computer only until such operability is restored), unless State purchases additional server licenses. In addition, any such licensed server components of the Lexmark Software may be used only with the licensed client components of the Lexmark Software.
- d. Agent Licensing. The agent components of the Lexmark Software may be used only on computers State owns, leases, or otherwise controls (or in the event of the inoperability of a computer, on State backup computer only until such operability is restored) equal to the number of agent seat licenses of the Lexmark Software that State has purchased. In addition, the licensed agent components of the Lexmark Software may be used only with the licensed server component of the Lexmark Software. State may not use the agent components Lexmark Software on any additional computers, on two or more computers, or in a LAN or other network, either in a multi-launch or remote sharing environment, without purchasing additional license rights.
- e. Feature Licensing. State may operate the feature component of the Lexmark Software only with the licensed server component of the Lexmark Software. State may not use the feature component of the Lexmark Software on any additional computers, on two or more computers or in a LAN or other network, either in a multi-launch or remote sharing environment, without purchasing additional license rights.
- f. Transaction Licensing. Certain components of the Lexmark Software are licensed under a transaction license model. If State purchased a license to use such components of the Lexmark Software, State may use the transaction component of the Lexmark Software only to execute the number of transactions that State has purchased, and such transactions must occur within the purchased transaction period. In addition, the transaction component may be used only with the licensed server component of the Lexmark Software. State may not use the transaction component of the Lexmark Software on any additional computers, on two or more computers or in a LAN or other network, either in a multi-launch or remote sharing environment, without purchasing additional license rights.
- g. U.S. Government Entities. Use, duplication or disclosure of the Lexmark Software and User Documentation is subject to the following restricted rights clause: The Lexmark Software and User Documentation are each a "commercial component," as that term is defined in 48 C.P.R. §2.101, consisting of "commercial computer software" and "computer software documentation," as such terms are defined in 48 C.P.R. §252.227-7014(a)(1) and 48 C.P.R. §252.227-7014(a)(5), respectively, and used in 48 C.P.R. §12.212 and 48 C.P.R. §227.7202, as applicable, and all as amended from time to time. Consistent with 48 C.P.R. §12.212 and 48 C.P.R. §227.7202, and other relevant sections of the Code of Federal Regulations, as applicable, and all as amended from time to time, all U.S. Government entities acquire the Lexmark Software and User Documentation with only the rights explicitly set forth in this Lexmark License.
4. Back up Servers. State may install, or, if the Lexmark Software is hosted by Netsmart, Netsmart may install the Lexmark Software on a back-up server or server cluster node to ensure server or system fail over of the State's Lexmark Software environment in the event of the failure and non-availability for productive use of the State's Lexmark Software environment (a "Fail Over Event"); provided, that (a) State may install the Lexmark Software for server or system fail over only on a backup server or server cluster node for system fail over, (b) such Lexmark Software must remain dormant until the occurrence of a Fail Over Event, (c) State use of such Lexmark Software must immediately cease upon the cessation of the Fail Over Event, and (d) State may not use such Lexmark Software in excess of the State's licensed rights or in violation of the terms of this Lexmark License. States right to use the Lexmark Software for system fail over is conditioned upon the State's cooperation with Lexmark in creating a hardware fingerprint profile of the backup server or server cluster node upon which State installs such Lexmark Software and the State's continuing obligation to update and correct such hardware fingerprint profile as changes to the backup server or cluster node hardware occur. The State's right to install and maintain the Lexmark Software for system fail over will expire upon the first to occur of (x) the State's modification of the Lexmark Software environment such that it no longer needs a copy of the Lexmark Software for server or system fail over, (y) Lexmark's modification of the Lexmark



Software to permit fail over operation of the Lexmark Software absent the need for a copy of the Lexmark Software for server or system fail over, or (z) the termination of this Lexmark License.

5. **Test Environments.** Lexmark offers test environment subscription services to enable State to test the Lexmark Software, including upgrades, enhancements and new releases of the Lexmark Software, in a test environment to analyze the operation of the Lexmark Software prior to making changes in the State's production environment. If State elects to utilize such test environment subscription services State shall not use such test environment for productive use or otherwise for use in excess of the State's licensed rights or in violation of the terms of this Lexmark License. If pursuant to the utilization of such test environment subscription services State replicates the production environment on separate server facilities, the State's right to use such services is conditioned upon the State's cooperation with Lexmark in creating a hardware fingerprint profile of the server facilities upon which State replicates such environment and the State's continuing obligation to update and correct such hardware fingerprint profile as changes to the backup server or server cluster node hardware occur. The State's right to utilize such test environment subscription services will expire upon the non-renewal of the elected test environment subscription service or the termination of this Lexmark License.
6. **Restrictions.**
  - a. Except as specifically authorized under Section 4 above, neither State nor any person under the State's authority or control may make any copy of the Lexmark Software, the User Documentation or any portion thereof. Any such copies of the Lexmark Software or the User Documentation shall include Lexmark's copyright, trademark and other proprietary notices. Under no circumstance shall State or any person under State authority or control permitted to use the Lexmark Software or User Documentation or to make or use any copies thereof in excess of States licensed rights. State shall account for and keep a record of each copy State makes of the Lexmark Software or User Documentation, where the copy is located and the name of the custodian of the copy. State must provide this record to Lexmark upon Lexmark's request.
  - b. State shall not voluntarily or involuntarily in any form or manner assign, transfer or pledge the Lexmark Software, User Documentation or other rights under this Lexmark License to any other person or entity, including, without limitation, any assignment or transfer incident to the State's merger or consolidation with another entity, or any assignment or transfer by operation of law, without Lexmark's prior written consent. Furthermore, State shall not sublicense, lease, network, rent, loan, distribute or share the State's license of the Lexmark Software, User Documentation or other rights under this Lexmark License with any other person or entity, including, without limitation, any use of the Lexmark Software or User Documentation to provide hosted services or to operate a service bureau, or publish, disclose or otherwise display in writing, electronically or otherwise any part of the Lexmark Software, User Documentation or such other rights without Lexmark's prior written consent in each such instance. Any such assignment, sublicense, transfer, pledge, lease, network, rental, loan or sharing of the State's license or any other rights under this Lexmark License absent Lexmark's prior written consent shall be void and of no force or effect and, as will any such publication, disclosure or display, shall cause the immediate termination of this Lexmark License and the State's license and rights under this Lexmark License.
  - c. State shall not reverse engineer, decompile, disassemble, re-engineer, reverse assemble, reverse compile or otherwise translate or create, attempt to create or permit, allow or assist any other person to reverse engineer, decompile, disassemble, re-engineer, reverse assemble, reverse compile or otherwise translate or create the source code of the Lexmark Software or its structural framework. State shall not modify, enhance or create derivative works based upon the Lexmark Software in whole or in part, including, without limitation, any derivative works based upon the database structures of the Lexmark Software, nor shall State otherwise change the Lexmark Software, or any of the foregoing without the prior written consent of Lexmark in each such instance, which consent may be withheld or conditioned within Lexmark's sole discretion. State agrees that any modification, enhancement, derivative work or other improvement to the Lexmark Software and/ or the



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8. **License Fees.** The license fees payable by State to Netsmart under its agreement with Netsmart for the Lexmark Software are paid in consideration of the licenses granted under this Lexmark License.
9. **Term.** This Lexmark License is a perpetual license, effective upon the installation of the Lexmark Software and shall continue until terminated in accordance with this Lexmark License. State may terminate this Lexmark License at any time by discontinuing all use of the Lexmark Software and User Documentation, returning to Lexmark all originals and copies of the Lexmark Software and User Documentation, including any extracts therefrom, with the exception of the State's meta data and associated objects, and all media containing the Lexmark Software, User Documentation and/or such extracts, and permanently removing and rendering inaccessible from the State's system all installations and copies of the Lexmark Software and User Documentation. If a Party ("Breaching Party") fails to properly perform its obligations under this Lexmark License, or if a Party materially violates any terms of this Lexmark License ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Lexmark License. In the event the State's breach is not of a nature to be remediable, then Lexmark may terminate this Lexmark License upon Lexmark's written notice to the State of such breach. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Lexmark License, and the Non-breaching Party may seek other remedies allowed at law or in equity for breach of this Lexmark License. Upon termination of this Lexmark License, the State's rights to use the Lexmark Software and User Documentation will terminate and State shall immediately discontinue all use of the Lexmark Software and User Documentation, return to Lexmark all originals and copies of the Lexmark Software and User Documentation, including any extracts therefrom, with the exception of the State's meta data and associated objects, and all media containing the Lexmark Software, User Documentation or such extracts, and permanently remove from the State's system and render inaccessible all installations and copies of the Lexmark Software and User Documentation.
10. **Warranty.** NETSMART AND THE STATE AGREE THAT CAREFUSION MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, TO THE STATE, PROVIDED, HOWEVER, THAT NETSMART IS AUTHORIZED TO PROVIDE A WARRANTY FOR THE CAREFUSION PRODUCT TO THE STATE, IN ITS OWN NAME, UNDER THE AGREEMENT BETWEEN THE STATE AND NETSMART. CAREFUSION HAS PROVIDED A WARRANTY TO NETSMART UNDER THE CAREFUSION RESELLER AGREEMENT AND CAREFUSION AND



NETSMART HAVE ALSO AGREED UPON TERMS FOR NETSMART TO RECEIVE PRODUCT SUPPORT UNDER THE CAREFUSION RESELLER AGREEMENT. NETSMART WILL PRESENT WARRANTY CLAIMS SUBMITTED BY THE STATE UNDER ITS WARRANTY WITH CAREFUSION.

11. WITH RESPECT TO THE LIMITATIONS OF LIABILITY AND LIMITATION OF DAMAGES IN THE AGREEMENT BETWEEN NETSMART AND THE STATE, NETSMART AND THE STATE AGREE THAT CAREFUSION IS A THIRD PARTY BENEFICIARY.
12. Intellectual Property. State recognizes, as between State and Lexmark, Lexmark's ownership in and title to all trademarks and/or service marks owned by Lexmark, including DOCUMENT CAPTURE, IMAGENOW, IMAGE NOW, WEBNOW, CAPTURENOW, !SCRIPT and PERCEPTIVE SOFTWARE, including any and all common law and registered rights throughout the world (hereinafter the "Trademarks"). State also recognizes, as between State and Lexmark, Lexmark's ownership in and to any and all copyrights, patents, trade dress, trade secrets and/or any other intellectual property rights related to the Lexmark Software and the User Documentation (hereinafter "Intellectual Property Rights"). No right, license or interest is granted for any Intellectual Property Right unless expressly provided herein, and Lexmark reserves all rights therein. No right, license or interest in or to any of the Trademarks is granted hereunder, and State agrees that State shall assert no such right, license or interest with respect to such Trademarks. Furthermore, State shall not contest the validity of any of the Trademarks or Intellectual Property Rights, claim adversely to Lexmark any right, title or interest in and to the Trademarks or Intellectual Property Rights and shall not use, register, apply to register or aid a third party in registering the Trademarks or Intellectual Property Rights during the term of this Lexmark License or any time thereafter. If Lexmark considers it advisable to record State as a licensee of the Trademarks, State agrees to cooperate in such procedure and to execute any documents submitted to State for this purpose.
13. General Terms and Conditions
  - a. Notices. Any notices, demands or other communications required or permitted under this Lexmark License shall be in writing and shall be deemed to have been given: (a) upon receipt if delivered personally; (b) five (5) days after deposit in the mail if sent by U.S. certified mail, postage prepaid, return receipt requested; and (c) upon receipt if delivered to a recognized overnight courier or delivery service which provides international service, fees prepaid; in each case addressed to the party for whom it is intended at the address for such party as last provided to the other.
  - b. Governing Law. This Lexmark License shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Lexmark License. Lexmark acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Agreement shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407. In each case, this Lexmark License shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.
  - c. Severability. Should any term of this Lexmark License be declared void or unenforceable by any court of competent jurisdiction, such declaration shall have no effect on the remaining terms hereof.
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#### 4. RESPONSIBILITIES OF END-USER.

- a. This Section applies to any means through which an End-User orders or accesses the HIN Services including, without limitation, system-to-system, personal computer or the Internet.
- b. For the purposes of this Section, the term "Authorized User" means a State employee that State has authorized to order or access the HIN Services and who is trained on State's obligations under this End-User License Agreement with respect to the ordering and use of the HIN Services and Inpriva Information.
- c. Each Direct Address has a healthcare or healthcare-associated organization, person or device bound to it as reflected in an associated Direct Digital Certificate.
- d. This License, which grants access to the HIN Services is expressly conditioned upon compliance by the End-User with the terms and conditions of the Direct Digital Certificates and the specific terms and conditions of a subscribed or licensed HIN Service, including those related to management of the HIN Services.
- e. Only Authorized Users identified by the State may order or have access to the HIN Services.
- f. State shall take reasonable and measures to prevent unauthorized ordering of or access to the HIN Services by any person other than an Authorized User for permissible purposes
- g. State shall monitor compliance with the obligations of this Section, and will endeavor to provide prompt notice to Inpriva if State suspects or knows of any unauthorized access or knows of any attempt to access the HIN Services for an unlawful purpose.
- h. State shall use commercially reasonable efforts to assure data security when disposing of any individually identified personal information obtained from Inpriva. Such efforts must include the use of those procedures issued by the federal regulatory agency charged with oversight of State's activities (e.g. the Office of Civil Rights) applicable to the handling of such information or records.
- i. State shall use commercially reasonable efforts to secure Inpriva confidential information when stored on servers owned, leased, or controlled by the State.
- j. So long as Netsmart is hosting the system for the State, Netsmart is responsible for ensuring that Users are properly qualified to use the HIN Services and use them for appropriate purposes, provided, however, that It is the State's responsibility to review the access auditing reports for individual Users if that is deemed by State to be important for their HIPAA compliance
- k. With respect to the State controlled computing and messaging environments, State is responsible for compliance with the HIPAA Security Rule and any other applicable laws and regulations.
- l. State agrees to accurately complete and maintain its registration information as part of the registration process and maintain the accuracy of the information in an "Identity Registry" State understand that inconsistencies that may result violation of applicable



laws and regulation may result in suspension of HIN Services unless and until corrected by the State. State agrees to require that its Users maintain the accuracy of the information contained in the Identity Registry.

- m. STATE HEREBY PROVIDES NOTICE THAT IT DOES NOT CONSENT TO INFORMATION PROVIDED BY THE STATE AND ITS USERS BEING INCLUDED IN PROVIDER/DIRECT DIRECTORIES ACCESSIBLE TO OTHER ORGANIZATIONS OR PERSONS HAVING DIRECT ADDRESSES. AND NETSMART WILL SO NOTIFY INPRIVA.